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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray:

Lord God Almighty, you have set Your glory above the heavens. Righteous and true are Your ways. You alone are the King of nations. Search our hearts and examine our motives so that we may walk in Your paths. Help us to put our mistakes and blunders behind us as we strive for Your ideal of sacrificial service. Remind us often of the price that was paid for our redemption.

Today, give our lawmakers the grace to glorify You. Bless them as they wrestle with the complicated issues of freedom. May their debates be characterized by candor and civility. In Your unfailing love, lead us all to paths of abundant liberty.

We pray this in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. ALLARD. Mr. President, today the Senate will be in a period of morning business throughout the day. The majority leader announced last night there will be no rollcall votes during today's session, but Senators are encouraged to come to the Senate floor to speak on the constitutional amendment regarding marriage, which has been slated for floor consideration early next week.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business with the first 4 hours equally divided between the two leaders or their designees.

As a Senator from Alaska, I ask I be notified if anyone makes a motion pertaining to any appropriations bill this morning.

PROPOSING AN AMENDMENT TO THE CONSTITUTION RELATING TO MARRIAGE

Mr. ALLARD. Mr. President, I rise today to start what I hope will be constructive debate on my amendment, S.J. Res. 40, the marriage amendment, which states:

Marriage in the United States shall consist only of the union of a man and a woman.

Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman.

Before making my formal comments I would also like to express my sincere gratitude to my colleagues who have cosponsored this amendment. It has taken countless hours of study and discussion to get to this point and each of our cosponsors has shown courage and commitment to protecting marriage.

I would like to express my appreciation to the majority leader for his commitment and leadership. Without the support of Senate leadership, the public may never have had an opportunity to address this vitally important issue in a democratic body.

I also thank President Bush for his early commitment to the principles embodied in this amendment. Marriage, the union between a man and a woman, has been the foundation of every civilization in human history. The definition of marriage crosses all bounds of race, religion, culture, political party, ideology, and ethnicity. Marriage is embraced and intuitively understood to be what it is. Marriage is a union between a man and a woman.

As an expression of this cultural value, the definition of marriage is incorporated into the very fabric of civic policy. It is the root from which families, communities, and government are grown. Marriage is the one bond on which all other bonds are built.

This is not some controversial ideology being forced upon an unwilling populace by the Government. It is in fact the opposite. Marriage is the ideal held by the people and Government has long reflected this. The broadly embraced union of a woman and a man is understood to be the ideal union from which people live and children best blossom and thrive.

As we have heard in hours upon hours of testimony in various Senate committees over the last 2 years, marriage is a pretty good thing. A good marriage facilitates a more stable community, allows kids to grow up with fewer difficulties, increases the lifespan and quality of life of those involved, reduces the likelihood of incidences of chemical abuse and violent crime, and contributes to the overall health of the family. It is no wonder so many single adults long to be married, to raise kids, and to have families branching out in every direction.

Today there are numerous efforts to redefine marriage to be something that it isn't. When it comes to same-gender couples there is a problem of definition. Two women or two men simply do

not meet the criteria for marriage as it has been defined for thousands of years. Marriage is, as it always has been, a union between a man and a woman. American society has come to recognize the stability and commitment of same-gender couples in a way unimaginable in many other countries. In some State's partnership laws and civil union statutes have been created—contractual bonds among same-gender couples—to symbolize and codify these relationships. Some cities and States have elected to express this legal recognition while others have not. Some employers extend benefits to same-gender partners while others do not. In virtually every town and city, America's tolerance and respect for diversity is second to none in the world. I believe that our democracy continually, systemically expresses these values.

Marriage, however, is what it is. It is a union between a man and a woman. Gays and lesbians are entitled to the same legal protections as any one else. Gays and lesbians have the right to live the way they want to. But they do not have the right to redefine marriage.

I believe the Framers of the Constitution felt that this would never be an issue, and if they had it would have been included in the U.S. Constitution. Like the vast majority of Americans it would have never occurred to me that the definition of marriage, or marriage itself, would be the source of controversy. A short time ago it would have been wholly inconceivable that this definition—this institution that is marriage—would be challenged, redefined, or attacked. But we are here today because it is.

Traditional marriage is under assault. I say assault because the move to redefine marriage is taking place not through democratic processes such as State legislatures or the Congress or ballot initiatives around the Nation. This assault is taking place in our courts and often in direct conflict with the will of the people, State statute, Federal statute, and even State constitutions.

Activists and lawyers have devised a strategy to use the courts to redefine marriage. This strategy is a clear effort to override public opinion and the long standing composition of traditional marriage and to force same-sex marriage on society.

Over the course of the last 10 years, traditional marriage laws have been challenged in courts across the Nation. Alaska, Arizona, California, Florida, Hawaii, Indiana, Maryland, Massachusetts, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, Oregon, Vermont, Washington, and West Virginia have all seen traditional marriage challenged in court. Cases are pending today in 11 of those States. But this is not a strategy based on tilting at windmills. It is a strategy that has been employed with a good deal of success.

The first success in this legal strategy was in Vermont in 1999. The Vermont State Supreme Court ordered State legislators to either legalize same-sex marriage or create civil unions. The second, and to date the most widely covered success in the effort to destroy traditional marriage, came more recently in the State of Massachusetts where four judges forced the entire State to give full marriage licenses to same-sex couples.

This edict came despite the fact that the populace of Massachusetts opposed this redefinition of marriage and despite the fact that no law had ever been democratically passed to authorize such a radical shift in public policy. Proponents of same-sex marriage have shopped carefully for the right venues, exploited the legal system, and today stand ready to overturn any and all democratically crafted Federal or State statute that would stand between them and a new definition of humanity's oldest institution.

The question of process is very important in this debate—it is in fact the very heart of this debate. While recent court decisions handed down by activist judges may not respect the traditional definition of marriage, these decisions also highlight a lack of respect for the democratic process. No State legislature has passed legislation to redefine the institution of marriage. Not one.

Any redefinition of marriage has been driven entirely by the body of government that remains unaccountable and unelected—the courts.

Many colleagues do not feel we should be talking about marriage in the Senate. I say we must. Our government is a three-branch government. The Congress is the branch that represents the people most directly. We have a duty to, at the very least, discuss the state of marriage in America. If we do not take this up, if we do not overcome procedural hurdles and objections we abdicate our responsibility. We will allow the courts sole dominion on the state and future of marriage. This Senate, the world's most deliberative body, must provide a democratic response to the courts.

Legislatures across the country have joined Congress in recent years in affirming a 1996 law called the Defense of Marriage Act—DOMA. DOMA defines marriage at the Federal level as a union between a man and a woman and essentially prohibits one State from forcing its will on another on the question of marriage. This bipartisan legislation passed with the support of more than three-quarters of the House of Representatives and with the support of 85 Senators before being signed into law by then-President Bill Clinton. To date 38 States have enacted statutes defining marriage in some manner, and 4 States have passed State constitutional amendments defining marriage as a union of one man and one woman. These State DOMAs and constitutional amendments, combined with Federal DOMA, should have settled the question as to the democratic expression of the will of the American public. As I outlined before, these laws—these expressions of the public—have been ignored by the activist courts.

State court challenges in Massachusetts or Vermont or Maryland may seem well and good to those concerned with the rights of States to determine most matters, a position near and dear to my heart. These challenges, however, have spawned greater disrespect, even contempt, for the will of the other States than any of us could have predicted. It seems to me that there are long-term implications for both Federal DOMA and the rights of States to define unions through either state DOMA or the State constitutional amendment process. It is clear to me that we are headed to judicially mandated recognition of same-gender couples regardless of State or Federal Statute.

The same-sex marriage proponents achieved some success in Vermont and Massachusetts by forcing the hand of those States' legislatures.

The national effort to redefine marriage has also been buoyed by decisions made by the U.S. Supreme Court. In June 2003 the Court inferred that a right to same-sex marriage could be found in the U.S. Constitution in Lawrence v. Texas. A variety of experts, including Justice Scalia and Harvard Professor Lawrence Tribe, forecast that this decision points to the end of traditional marriage laws—including Federal and State DOMAs. The Massachusetts court relied heavily on the Lawrence decision to strike down the State's traditional marriage law in that Goodridge case. The court further specifically threatened and questioned the validity of DOMA and traditional marriage laws around the Nation.

When Goodridge took effect on May 17 of this year, same-sex couples became entitled to Massachusetts marriage licenses.

In anticipation of Goodridge, a handful of local officials in New York, California, and Oregon began issuing licenses to same sex couples in February and March. To date, through the combined efforts of lawless local officials and those licenses issued in Massachusetts, couples from at least 46 State shave received licenses in those jurisdictions and returned to their home States. These 46-plus States are State and Federal DOMA challenges just waiting to happen. A couple will file for recognition—sue for recognition—under the full faith and credit clause. What we know about the Lawrence decision, that all traditional marriage laws are unconstitutional, dooms those State DOMAs.

There is a case pending in Seattle today to force recognition of an Oregon marriage license. More of these cases are expected and we look forward to nothing less than a patchwork of marriage laws, crafted by judges and forced on to one State from another outside the democratic process, regardless of the will of the voters.

It is important to highlight what is going on in the State of Nebraska where an even more odious turn of events is unfolding. Nebraskans passed a State constitutional amendment, defining marriage as a union between a man and a woman, that passed with 70 percent of the vote. The ACLU and the Lambda Legal Foundation are now suing Nebraska in a Federal court to undo the will of the voters.

According to testimony in the Senate Judiciary Constitution Subcommittee, Nebraska Attorney General Jon Bruning, whose office moved to dismiss the case and was denied, the language in the court's order signals that Nebraska will very likely lose the case at trial. I find it chilling that the will of an entire State, expressed democratically, may be undone by a Federal judge in an unelected position and tenured for life.

So we find ourselves here today, seeking to debate an amendment to the United States Constitution that reads in its entirety as follows:

Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman.

Our amendment defines marriage as it has been defined for thousands of years in hundreds of cultures around the world. This text further defines that any establishment or non-establishment of civil unions or partnership laws be created democratically, by the States themselves, and not by courts.

I have said it time and time again and I say here today for the record, the amendment does not seek to prohibit in any way the lawful, democratic creation of civil unions. It does not prohibit private employers from offering benefits to same-gender partners. It denies no existing rights.

What our amendment does is to define and protect traditional marriage at an appropriate level, the highest possible level—the Constitution. Importantly, the consideration of this amendment in the Senate represents the discussion of marriage in America in a democratic body of elected officials. This is something too long denied this important topic.

I have heard from those who claim this amendment discriminates against people; that the very definition of marriage is somehow a tool for oppression.

To those who believe that our marriage protection amendment is discriminatory, I ask them this: Do you truly believe that marriage, the traditional and foundational union between a man and a woman, is discrimination? Is it discrimination to hold as ideal that a child should have both a mother and a father?

It is important to make clear that on the question of federalism and States' rights, I stand where I always have. While an indisputable definition of marriage will be a part of our Constitution, all other questions will be left to the states. Gregory Coleman, former Solicitor General of the State of Texas, testified before the Senate Judiciary Subcommittee on the Constitution last September and made the following statement on this matter:

Some have objected to a proposed constitutional amendment on federalism grounds. These concerns are misplaced. The relationship between the states and the Federal government is defined by the Constitution and, a fortiori, a constitutional amendment cannot violate principles of federalism and States' rights.

A federal constitutional amendment is perhaps the most democratic of all processes—because it requires ratification by three-fourths of the states—and simply does not raise federalism concerns. The real danger to States' rights comes from the recognition of unenumerated constitutional rights in which the states have had no participation.

I share those sentiments and cannot express them any more clearly. We stand today at the commencement of the most democratic, most federalist process in all our government. Those around the country who have watched as activist courts have wildly disregarded these principles I say to you, watch the Senate; watch the House of Representatives, watch your elected officials and see where they stand on this most important debate.

This body and that on the other side of the Capitol represent the American people more fully and completely than any other and it is time we make this discussion truly national and truly democratic.

Those serving in the Congress understand that there is a great deal of emotion on both sides of this issue, and not every one of us will agree on this matter. It is my hope that we can agree that in matters concerning marriage, the most fundamental of all social institutions, this debate can not take place exclusively in the courts. The democratic process compels this Congress to discuss marriage and what is taking place—the judicial redefinition of marriage.

Marriage, the union between a man and a woman, has been the foundation of every civilization in human history. This definition of marriage crosses all bounds of race, religion, culture, political party, ideology, and ethnicity. It is not about politics or discrimination, it is about marriage and democracy. It is incumbent upon us to remember that and to move forward.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Oregon is recognized.

Mr. SMITH. Mr. President, I thank Senator ALLARD for his willingness to change and clarify the proposal he makes today so that it leaves open to the States the elbow room that is appropriate to define legal rights for non-traditional families, gays and lesbians, and others.

It is a fact that sociologists say marriage, as we have traditionally known and practiced it, is the ideal circumstance for the creation and rearing and nurturing of children. But it is a fact that not all children have the opportunity of a family with a mother and a father, though what marriage does as a legal institution is to say to children here and those yet unborn that there is a legal framework in which they can enjoy protection and have the society of a mother and a father.

It is clear as we wrestle with this sensitive issue, it is clear to the conscience of the American people that boys and girls need moms and dads. Not all get them, but the law has provided a framework for it. Those children who do not have it should also enjoy legal protections not unlike those that are enjoyed in the institution of marriage.

In all the time that I have been a U.S. Senator, I have been an advocate of gay rights. Yet throughout that time I also have believed it right to defend traditional marriage. I have tried hard to be clear, consistent, and careful about this issue and this debate. I know my position as being for gay rights but for traditional marriage is a disappointment to many of my gay and lesbian friends.

I also note for the record I get little credit from the right because I do advocate for many gay rights. Indeed, the other night on his radio program, Dr. James Dobson said to a national audience, which included many Oregonians, that I was not going to vote for traditional marriage. I wish he hadn't done that. I believe that is a form of bearing false witness because I have been clear and I have been consistent on this point. He may owe me no apology, but I wish he would make it clear to my constituents.

I make no apology for supporting many of the needs of gay and lesbian Americans. Issues of public safety, housing, employment, benefits: these are rights that we take for granted, rights which many of them have felt out of reach. So I have believed it is not just right to advocate for these things but it even be a part of my belief system to advocate for those who are oppressed and to show tolerance by helping those in need. Matthew Shephard comes to mind, and many others who have suffered hate crimes against them in the most vicious of fashion. I think our society is changing its heart on these issues in ways that Americans want to be tolerant, they want to be careful, they want to say to gays and lesbians that we love you, we include you, we care about you.

But in saying that, I think many feel intuitively to be careful on the issue of marriage. Marriage is a word. Words have meaning. Few words have more meaning to our culture and our future and our civilization than marriage because marriage ultimately is about more than just consenting adults. It is about the natural rearing and nurturing of children, preparing them for citizenship under the most ideal circumstances possible.

Senator ROBERT BYRD often comes to this Chamber, and I love it when he quotes Cicero, an ancient Roman Senator. So I quote Cicero this morning. Cicero said very long ago, ''The first bond of society is marriage.'' I believe Cicero was right. He was not a religious man, he was a secular man. He was a nonbeliever. But he also saw the incredible benefit to building up citizens of Rome through this first bond of society which was then and is still marriage.

I suppose I take this position, a nuanced position, to be sure, because I am somewhat of an old-fashioned idealist. However imperfectly practiced by the American people, marriage still is a perfect ideal. I think the American people deserve a debate on this that is civil, that is respectful, and that includes all Americans.

Some have come to this floor, and will in the coming days, to hold up the Constitution. Here is a copy of it. They will say this is a sacred document, a document that should not be amended. I will admit to the Presiding Officer it would be better that we not have to do this, to even resort to a constitutional amendment. But this is what Article V of the Bill of Rights says:

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution. . . .

It goes on.

They would not have included this Article V in the Bill of Rights if it were not intended that this be a living document. But they intended the Constitution to be a living document, and the United States has amended this Constitution 27 times.

Were it not a living document, this document would have failed. Were it not subject to amendment, the most egregious kinds of actions would have been put in place that would have made us ashamed forever.

For example, perhaps the most dreadful decision ever rendered under this Constitution was that of Dred Scott. Roger B. Taney, the Chief Justice of the Supreme Court, held that African Americans were not human and were the subject of property and could be controlled as property like any other chattel. That is a decision that goes down in infamy, if ever there was one. It took a Civil War and then the thirteenth and fourteenth amendments to the Constitution, which before was silent on the issue of slavery, to ultimately overcome this insidious practice in parts of the United States.

Some say: Well, that is a sacred thing that was done. And I agree, it was. I believe the Constitution is both sacred and secular, but living and improving, and open to debate.

I mentioned the last time the Constitution was amended was in 1992. It is the twenty-seventh amendment. It reads:

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

That is the twenty-seventh amendment. It is about money. It is about salaries for Senators and Representatives. I suggest to you that may be appropriate to be in the Constitution because it went through the process, but there is nothing sacred about that.

So the question then becomes, Is it appropriate to put a definition of marriage into our Constitution? I would say, as a matter of preference, it is better not to put cultural issues in the Constitution, until you come to this question: Shall the Constitution be amended? And I tell everyone, the Constitution of the United States is about to be amended. The question is: By whom? Will it be done by a few liberal judges in Massachusetts, a lawless mayor in San Francisco, or clandestine county commissioners, or by the American people in a lawful, constitutional process, as laid out in our founding document?

You will hear lots of people beating on their chests and sounding very sanctimonious in this debate that: We should not do this or that. But the truth is, the Constitution is going to be amended. And I say: Include the American people.

Now, some also say: The issue of marriage has nothing to do with the Federal Government. Leave it to the States. My family has an interesting history in regard to leaving it to the States. My ancestors were, for the most part, Mormon pioneers who came from England in little boats, crossed the ocean, and walked across the country. They had a peculiar practice among them. It is found throughout the pages of the Bible, particularly in the Old Testament. They practiced a principle they called ''plural marriage.'' The marriages practiced by Abraham, Isaac, and Jacob.

My great-grandfather David King Udall had two wives, one large, happy family. I am descended from the second. He came to America, helped found the State of Arizona, and spent time in prison because he violated a Federal law, the Edmunds-Tucker law from the 1870s, in which the Federal Government defined marriage as ''one man and one woman.'' He was a great man, a great pioneer, had great sons and daughters who helped the desert of the West blossom as a rose.

He has a large posterity. He sacrificed much for the principle of his faith. But he paid a price because the Federal Government, long ago, defined what marriage was. Ultimately, Grover Cleveland pardoned him, and he named one of his sons Grover Cleveland Udall.

Some people would say this is enacting discrimination into the Constitution. Well, my progenitors were discriminated against, I guess, but the truth is, our country through a lawful process in the 1860s and 1870s defined marriage at the Federal level.

Now what is happening? What is happening in our country is we have elected officials and unelected judges reinterpreting the Constitutions of their States and of our Nation to find in it rights that are not mentioned in it. This has happened a lot in recent years. I have concluded it is better that these things be resolved with the American people than without them.

The American people have a sense of fairness and tolerance and justice and right and wrong. What is happening is their views, their values, their beliefs, their respect for law is being trampled upon by a few liberal elites. That is not right.

In my own State of Oregon, in 1862, Oregon passed its law on marriage. Mr. President, 142 years have transpired, 142 years of Oregon law and practice and custom. But what happened recently? Four or five county commissioners in one of our counties ignored 142 years of law, ignored 1,000 years and more of human history, and, without notice, without a public meeting, changed the law. To me, this is deeply disappointing and terribly undemocratic. Before this happens again, I think it is appropriate, on an issue this central to our country, to our civilization, to the future, we involve ''we the people.'' The only way to do that is through a constitutional process.

Now, I wish this cup would pass from us. I do not like this. I love people. I believe in tolerance. But I believe in democracy. Many will tell you we should leave this alone. But if you leave this alone, you will leave it to others. And if you leave it to others, they will dictate to the American people what it has to be. The only recourse then available—when a Federal judge nullifies all State DOMA or constitutional provisions of the several States, finding an equal protection right to same-gender marriage—the only recourse then is through the constitutional process laid out by the fifth amendment in the Bill of Rights.

That is how you include the American people. I say public meetings, public notice, public debates, let people vote, let their elected representatives in the several States vote on it. If we are going to change it, let's change it with the American people, not at the American people. Unfortunately, that seems to be what many who will argue against this want to happen. They want to do this to us, not with us.

For the record, let me express to my gay and lesbian friends, I don't mean to disappoint you, but I can't be true to you if I am false to my basic beliefs. I believe that marriage, as we have known and practiced it in this country for hundreds of years now, is something that should be preserved. New structures can be created, new legal rights conferred, without taking down this word that represents an ideal—not about adults but including children. I mean to hurt no one's feelings in my position. I intend to be your champion on many issues in the future, if you

want me. But on this one, I have to be able to get up in the morning and look in the mirror and be true to myself.

I have spoken what I believe to be true this morning. I believe marriage is more profoundly important than we might now recognize. Before we let a few tell the many what it is going to be, I think we ought to debate it, carefully consider it, because while we debate issues of war and peace and recession and prosperity, some will say there are so many more important things to discuss than this.

I say to you, there probably isn't a more important issue to discuss than the legal structure that binds men and women together for the creation and the rearing and nurturing of future generations of Americans. I make no apology for my vote for this process, for an amendment that defines marriage, because that is where it is headed, because the courts will compel it. And our legal structure gives American citizens an avenue to be included. So with my vote, I say include we the people.

I yield the floor and suggest the absence of a quorum, and I ask unanimous consent that the time be equally divided between both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUICIDE EPIDEMIC ON INDIAN RESERVATIONS

Mr. DORGAN. Mr. President, yesterday on the Senate floor and this morning watching an interview on NBC's ''Today Show'' by my colleague from Oregon, Senator SMITH, there was a great deal of discussion about the issue of youth suicide. All of us in this Chamber, as part of the Senate family, have extended our hearts, thoughts, and prayers to the Smith family upon the loss of their son. It is devastating to lose a child. I lost a beautiful, wonderful daughter some while ago to heart disease.

Yesterday, as I listened to my colleague, Senator SMITH, describe the loss of his son and discuss the issue of suicide, I know that it adds a dimension to what is an almost unbearable burden of losing a child, to lose a child to suicide. So my thoughts and prayers have been with the Smith family, and I know, too, that what Senator SMITH has done in providing leadership for the legislation passed last evening is going to save lives.

We will not know their names, but there are going to be young people in this country whose lives are going to be saved because the grants and the resources that are going to be made available through the legislation passed by the Senate last night. I am glad to be an original cosponsor of this bill. It is going to give kids who are despondent and have despair and depression hope, opportunity, and counseling. So what the Senate did last night is going to save lives, and we owe a great debt of gratitude to Senator SMITH. I hope the lives that are saved in the years ahead in some way are a memorial to the late son of Senator SMITH and his family.

I had come to the floor some 2 months or so ago intending to speak about a young girl on the Spirit Lake Nation Indian Reservation in North Dakota. When I came to the floor, I saw my colleague was in the Chair at that point and I decided that I really did not want to describe the circumstances of her death because she had committed suicide. I knew the burden the Smith family had been dealing with surrounding the loss of their son. So I did not describe that young girl's death in any detail, but I would like to today in light of the speech that was delivered and in light of the action the Senate took last evening, which has given me some hope.

I will describe this young girl. This young girl was named Avis Littlewind. She died a few months ago now. She took her own life. She was 14 years of age. She lived on the Spirit Lake Nation Indian Reservation. She was a seventh grader at the Four Winds Middle School. I am told she enjoyed riding horses, playing basketball, grooming her animals, and listening to music. The day after she died, someone told me about the plight of this little girl. So I called the reservation and talked to the psychologist and the social worker involved. Since that time, I have gone to that reservation, I have sat around in a circle for an hour visiting with her classmates in the seventh grade, talked to the counselors, talked to the school administrators, talked to members of the tribal council about what is happening on our Indian reservations. Because, although I am speaking today about Avis Littlewind, there is an epidemic of suicides on Indian reservations. The legislation that Senator SMITH, Senator DODD, and others offered in the Senate last evening will help address this epidemic by making tribal governments also eligible for grant funding for suicide prevention.

Avis Littlewind died just recently by her own hand. Her sister took her life 2 years ago. Her father took his life in a self-inflicted bullet wound 12 years ago. But it is more than that. The tragedy of suicides is not just a problem on the Spirit Lake Indian reservation—Just in North Dakota, I have gone on the same mission to talk to people at the Standing Rock Sioux Reservation when there was an epidemic of threats of suicide by young people.

In this case with Avis Littlewind, there were a lot of warning signs. This little seventh grade girl missed 90 days of school up until April. She was lying in her bed day after day in a near fetal position.

Tragically, she had an appointment to see the IHS social worker later the same day that she took her life. She did not live long enough to make that appointment.

When I called the reservation to talk to leaders about these issues and then subsequently went there to visit with them, this is what I discovered: The reservation has one psychologist and one social worker. They did not have nearly the capability to follow up with these cases. They just could not cope. They did not have the capability to give somebody a ride to the clinic. They have to borrow a car, beg somebody to give someone a ride to some medical help.

It is interesting to me, and tragic as well, that the Federal Government is directly responsible for the health care of only two groups of people. We have a trust responsibility for the health care of American Indians. That is a trust responsibility. That is not optional, that is our responsibility. And we have a responsibility for the health care of Federal prisoners.

Do you know that on a per capita basis we spend almost twice as much for health care for Federal prisoners as we do for health care for American Indians? So little girls like Avis Littlewind are found dead by suicide, and we don't have the mental health services to reach out and help these kids. The mental health services are not available. Just call around and ask.

There are kids who, for their own reasons, are desperate, are depressed, are reaching out, and yet the services are not available to them. We must do much better than that.

Let me describe the circumstances on our Indian reservations in this country because on many of them it looks as if you are visiting a Third World country. Alcoholism, seven times—not double, triple, quadruple—but seven times the rate of the national average; tuberculosis, seven times the rate of the national average; suicide, double the national average in this country; homicide, double; diabetes, four times. On the Fort Berthold Reservation, the rate of diabetes is 12 times the national average. We have to do much better. We have a responsibility.

I never met this young girl, but I met her classmates and they told me about her. She, like a lot of kids, was a wonderful young woman, but she lived in a circle of poverty in a family in which two other family members had taken their lives. Her cousin, incidentally, 2 weeks after Avis Littlewind's death, threatened suicide and had to be hospitalized.

But it is not just this family. It is an epidemic on our Indian reservations with young people. We need resources to deal with it. That is why I was so pleased last evening to hear the speech given by Senator SMITH, a speech that was obviously very difficult for him to give on the Senate floor. Then that was followed by legislation enacted by this Senate that will begin the long road to

do something about this problem, to save the lives of kids like Avis Littlewind. She may not long be remembered because she is just a statistic with respect to teen suicides on Indian reservations, but this young girl, I am sure, wanted the things that we want and that our children want—a good life, an opportunity. She wanted to have hope for the future. She is now lying in a grave, having taken her own life.

We bear some responsibility because the resources that were necessary, needed to help treat the depression that this young girl had, were simply not available. I met with the school administrators, the tribal council, all those folks. The fact is, it was clear to me no one took it upon themselves to reach out. If you have a young 14-year-old lying in bed for 90 days, not attending school, in desperate condition, something is wrong. Someone needs to intervene. Someone should have saved her life.

I am not blaming anybody today. I am just saying today there is hope. There was not before. Today there is hope. The Senate has taken action on a significant piece of legislation that I think will save lives. It is too late to save Avis Littlewind's life, but it will save other lives. Today I commend my colleague, Senator SMITH, whom I believe, through the pain and suffering that his family has experienced, has done something that will give others hope and offer life and opportunity to others.

I yield the floor.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Utah.

Mr. HATCH. Madam President, let me add to the Senator's remarks. I listened to my dear friend, my partner, GORDON SMITH, yesterday on the Senate floor, and I was very impressed, having seen what he and his family have gone through and what others have gone through. It meant so much to have him lead the fight for this particular bill.

I certainly appreciated the remarks of the distinguished Senator from North Dakota. There is no question, this is a serious problem for young people throughout our country—again, especially for those who are Native Americans. I believe the bill, sponsored by my dear friend from Oregon, and of course a number of the rest of us, will go a long way toward helping to resolve and alleviate some of these problems.

I compliment all concerned for their sensitivity and their desire to do what we can to alleviate these problems and to help our children throughout our country.

My home state of Utah has one of the highest suicide rates in the country, in fact, suicide rates in Utah for those 15 to 19 years of age have increased close to 150 percent over the last 20 years. In response to these disturbing statistics, I authored legislation in 2000 to direct the Secretary of Health and Human Services to provide grants to states and other entities in order to create programs to reduce suicide deaths among children and adolescents. This legislation was included in the Children's Health Act of 2000 which was signed into law by the President.

Again, I am proud to be an original cosponsor of the Garrett Lee Smith Memorial Act and I credit its rapid passage through the Senate last night to one person—my dear friend, Senator GORDON SMITH.

A JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATING TO MARRIAGE

Mr. HATCH. Madam President, I have been around here for 28 years. I have seen a lot of very important issues. I have seen a lot of phony arguments through the years. One of the phoniest arguments I have seen is, Why are you moving toward this constitutional amendment to preserve the traditional definition of marriage? We have so many other more important things to do. Why, we have the economy, we have the war—we can name thousands of things that are more important to some of the opponents of this measure than this particular measure. But I say I don't know of anything in our society or in our lives or in our country or in the world that is more important than preserving our traditional family definition.

I don't know of anything that is more important to children. I don't know of anything that is more important to morality. I don't know of anything that is more important to education. I don't know of anything that is more important to strengthen our country. I don't know of anything that is more important to the overall well-being of our citizens than the preservation of the traditional marriage definition that has been the rule for 5,000-plus years in this world; that is, marriage should be between a man and a woman.

Everybody in this body knows I have led the fight in three AIDS bills. I have been the primary sponsor of those bills along with Senator KENNEDY. Everybody knows that I have fought hard against hate crimes. One of the principal bills that lies before us is the Hatch-Smith-Kennedy-Feinstein bill against hate crimes, part of which are hate crimes against gay people. I do not believe in discrimination of any kind, and I do not believe that what some people have done to gay people in our society is relevant or right.

Some of it has been purely prejudicial. I don't believe that type of thinking should see the light of day.

But like my colleague from Oregon and others, I draw the line when it comes to traditional marriage and the definition of traditional marriage. So I rise in support of an amendment to our Constitution that would maintain the institution of marriage between a man and a woman, an institutional arrangement that is to this date supported by all of our State legislatures, every State legislature in the country. The bedrock of American success is the family, and it is traditional marriage that undergirds the American family.

The disintegration of the family in this country correlates to the many serious social problems, including crime and poverty. We are seeing soaring divorce rates. We are seeing soaring out-of-wedlock birth rates that have resulted in far too many fatherless families. Weakening the legal status of marriage at this point will only exacerbate these problems, and we simply must act to strengthen the family. It is one of the most important things that we can consider and that we should do.

To me, the question comes down to whether we amend the Constitution or we let the Supreme Court do it for us. I know which is the more democratic option, and that is for us, as elected officials, to amend the Constitution. Questions that are as fundamental as the family should simply not be left to the courts to decide. If we permit ourselves to be ruled by judges, we further erode the citizenly responsibility that is central to our republican form of government.

Many in this body, in the ivory tower, often fret that Americans do not take politics seriously enough. Perhaps that is because we, through our inaction, routinely suggest to the electorate that the most important questions facing us as a political community should be decided by a handful of Harvard-educated lawyers, rather than by the people themselves. A free citizenry should not accept such a goal, and should not accept such thin gruel.

Our hope for this amendment is that it will maintain the traditional right of American people to set marriage policy for themselves.

We do not take this proposal lightly. The Constitution has functioned to secure and extend the rights of citizens in this Nation, and it serves as a beacon of hope for the world. Aside from the Bill of Rights, it has rarely been amended, but when it is, we have done so to expand the rights of democratic self-government and to resecure the Constitution's original meaning.

That is precisely what we are intending here. Marriage policy has traditionally been set by the States. The States have made their opinion on this subject clear. They have overwhelmingly acted in recent years to preserve traditional marriage.

Still, absent an amendment, we should have no faith that the courts will uphold these State decisions. Believe me, there are other ways we would rather spend our time. We did not choose this schedule—the courts did. But as public representatives, bound by the oath to defend the Constitution, we will not hide from our obligations.

Our case is simple. Last fall, in its Goodridge v. Department of Public

Health decision, the Supreme Judicial Court of Massachusetts declared same-sex marriage to be the policy of the Commonwealth of Massachusetts. Today, same-sex marriage couples live in 46 States, and activists are implementing a well-funded, multifaceted, and highly coordinated legal assault on traditional marriage.

Look at this. Not one legislature has voted to recognize same-sex unions. But in 1996, States with same-sex marriage couples, zero; in 2004, States with same-sex marriage couples, 46. That is what has happened as a result of this particular decision by the Massachusetts Supreme Judicial Court.

The inescapable conclusion is that absent an amendment to the Constitution, same-sex marriage is coming whether you like it or not.

Regardless of what the people think, regardless of what elected representatives think, it is going to be imposed on America because of one 4-to-3 version of an activist Massachusetts Supreme Court.

The opponents of this amendment urge us to remain patient. Our actions are premature, they tell us. Those opposed to protecting traditional marriage keep moving the goal line, and to ignore this strategy is to guarantee defeat.

Marriage first became a national issue in 1996. Then, as now, a State court threatened to impose same-sex marriage on citizens of their own State, and in so doing they jeopardized the traditional marriage laws of the entire Nation.

Given this scenario, it would have been flatly irresponsible for us not to act. So when faced with the potential of the Supreme Court of Hawaii dictating marriage policy for all 50 States, we passed the Defense of Marriage Act, or DOMA.

Then, as now, our opponents accused us of playing election year politics—the same phony argument they are accusing us of today, or in this particular matter. The opposition insisted there was no need for DOMA, the Defense of Marriage Act. In fact, Senator JOHN KERRY argued, and others with him, that it was not necessary since no State has adopted same-sex marriage. That was their argument. Eight years later, a bare majority of JOHN KERRY's own State's supreme court has brought same-sex marriage to the State and to the citizens of Massachusetts.

What is his position now? Sounding much as he did 8 years ago, he said, and I quote:

> I oppose this election-year effort to amend the Constitution in an area that each State can adequately address, and I will vote against such an amendment if it comes to the Senate floor.

Keep in mind, the only thing that would permit each State to decide this issue on its own is DOMA, the Defense of Marriage Act. What was Senator KERRY's opinion on DOMA? I don't mean to just single him out; there are others on the other side who have taken the same position. What was their opinion on DOMA? Senator KERRY called it ''fundamentally unconstitutional.'' In fact, that was the opinion of much of the Democratic Party and our academic legal establishment at the time.

Let me refer you to this chart. But isn't DOMA unconstitutional? Senator KERRY said: You don't have to worry about it because we have the Defense of Marriage Act.

This is what he said on September 3, 1996:

> DOMA does violence to the spirit and letter of the Constitution.

Senator KENNEDY, our other distinguished Senator from Massachusetts, in his remarks on the Senate floor on September 10, 1996, said:

> Scholarly opinion is clear. DOMA is plainly unconstitutional.

Professor Laurence Tribe, Harvard Law School professor, in a letter submitted for the RECORD in Senate proceedings, said on June 6, 1996:

> My conclusion is unequivocal. Congress possess no power under any provision of the Constitution to legislate as it does in DOMA any such categorical exemption from the Full Faith and Credit Clause of article IV.

The ACLU, in a background briefing in February of 1996, says:

> DOMA is bad constitutional law . . . an unmistakable violation of the Constitution.

Think about that.

So let me get this straight. We do not need DOMA, was the argument because no State has actually pursued same-sex marriage.

That is what Senator KERRY said against DOMA when he argued against it back then. But now that Massachusetts has, we do not need an amendment because we fortunately have DOMA. How convenient. Except for the fact they are all arguing that DOMA is unconstitutional. It just doesn't seem to fit.

I have seen these ads on Senator KERRY flip-flopping. We all know that around here. That is what he does. But this is the grand flip-flop, one of the grandest of all times. A person's head starts to spin just trying to undo this logical mess.

But in the end, that is the point. They hope to confuse and to obfuscate and cast aspersions, and, by so doing, maybe succeed in lulling citizens into apathy on this subject.

Fortunately, this issue is actually rather simple for those who approach it with any sincerity. There are, in fact, only two questions that Senators must answer before voting on this amendment; that is, if the filibuster will be ended and we are able to proceed to the constitutional amendment and debate it.

The first thing is whether they support traditional marriage. Bulletproof majorities in this body do. No question about that. The American people do, as well.

The second is whether the majority's desire to protect traditional marriage can be guaranteed without a constitutional amendment.

The assertion this was a State issue, that the States can protect marriage, neglects the likelihood that the courts will overturn the well-considered opinion of citizens in every State. Skeptics and opponents of this constitutional amendment claim, sometimes relying on traditional Republican and conservative principles of federalism and limited government, that this is not the time nor the place for the National Government to act.

We must be clear. The States have already acted. Since marriage first became an issue in 1996, over 40 States—look at this—over 40 States have acted explicitly to shore up their traditional marriage laws—40 States. What a national consensus? States where legislatures have approved same-sex marriage, zero; not one State legislature, that is. The people's representatives, the ones who have to stand for reelection, not one State. States where legislators and citizens have recently acted to protect traditional marriage, 40 States.

But all of this legislation has been in danger by the Massachusetts court's actions this past fall and by recent decisions by the U.S. Supreme Court. The courts, in an elite legal culture out of touch with average Americans, have made this a national issue. It can no longer be adequately resolved by the States. More and more coordinated lawsuits are being filed every day, and the question of same-sex marriage will terminate in Federal courts at which point same-sex marriage will become the law of the land, in spite of the desires of the elected representatives throughout at least 40 States, and I believe other States would follow suit in time to preserve traditional marriage.

Let me say this slowly so it can sink in. Absent a constitutional amendment that protects the rights of the States to maintain their traditional understanding of marriage, the Supreme Court will decide this issue for them.

The Massachusetts Supreme Judicial Court commanded, in a fit of hubris, that the State must extend marriage to same-sex couples. Never mind that the Massachusetts Constitution created by the hand of John Adams himself clearly did not contemplate this conclusion. Never mind there is an obvious national basis for the States' traditional marriage laws and never mind the people in the Bay State were adamantly opposed to this judicial usurpation of policy development best left to legislative judgment. No, they went right ahead and issued a decision that certainly made them the toast of the town on the cocktail party and academic lecture circuit, but they put their personal self-satisfaction ahead of their judicial responsibilities. By doing so, they knowingly threatened the marriage laws in every State in our country.

The people of Massachusetts acted quickly to amend their constitution

and overturn this egregious abuse of judicial authority. The problem is that amendment will not be ratified for at least 2 years—a fact, by the way, of which the Massachusetts Supreme Court was keenly aware. In the meantime, people will be married in Massachusetts and they will move to other States. What will become of these same-sex marriages? Will they be recognized? Will they be dissolved? Can these people get divorces in other States? Who will have custody of the children in the event of disillusion? Already, as a result of the lawless issuing of marriage licenses to same-sex couples by the mayor of San Francisco, same-sex marriage couples live in 46 States now. Together, these actions have stirred up a hornet's nest of litigation.

When allowed to choose, legislatures protect marriage rather than dismantle it; therefore, advocates of same-sex marriage resort to strategies involving the executive or judicial branches. In States such as California, Oregon, New York, and New Mexico, rogue local officials have simply defied their own State marriage laws and married thousands of same-sex couples. While saying that New York law does not allow same-sex marriages, State attorney general Elliot Spitzer will nonetheless recognize such marriages performed in other States. That is his opinion. These actions have an impact on the legal landscape for sure, but in most cases advocates turn to the courts to impose their preferred policies on fellow citizens. Their legal war against traditional marriage has at least five fronts.

Remember article IV of the Constitution, full faith and credit clause. Most authorities believe the Massachusetts Supreme Court will be binding on every other State in the Union, not that they will have to allow same-sex marriages themselves in defiance of traditional marriage beliefs, but they will have to recognize the marriages that are performed in Massachusetts that come to their States under the full faith and credit clause. Most constitutional authorities agree with that, and it is believed that the U.S. Supreme Court will uphold that and thus rule DOMA, or the Defense of Marriage Act, unconstitutional.

There are five legal fronts of attack on the Defense of Marriage Act or traditional marriage. First, as in Massachusetts, gay citizens who wish to marry allege that State laws protecting traditional marriage are violations of their own State constitutions. So far, there are 11 States facing these challenges to their marriage laws.

This week, the ACLU filed suit in Maryland arguing that the State's failure to recognize same-sex unions violates the State's constitution.

In California, even though more than 60 percent of the voters recently approved a statewide ballot initiative to maintain traditional marriage, the California Supreme Court is now considering the constitutionality of that democratic action.

In Nebraska, the ACLU has actually challenged a duly passed State constitutional amendment that defines marriage as being between a man and a woman. Similar challenges are pending in Florida, Indiana, Washington, and West Virginia, all of which have passed laws to secure traditional marriage just in the last 10 years as a result of this focused consideration of the subject by citizens of those States.

The legislatures in Delaware, Illinois, Michigan, North Carolina, and Vermont are considering actual amendments to protect traditional marriage. Montana, North Dakota, Ohio, and Oregon have signature-gathering campaigns underway. Amendments are already on the ballot in Arkansas, Georgia, Kentucky, Michigan, Mississippi, Missouri, Oklahoma, and my own home State of Utah.

One would expect and hope that given this public concentration on the subject, a proper respect would be given to a popular resolution of this issue. We can be sure, though, that the legal advocates of same-sex marriage will not display any such reservations.

The second case against traditional marriage will emerge once two citizens legally married in Massachusetts move to Ohio, Louisiana, or some other State and seek to have their marriage recognized. It is simply implausible to deny that this scenario will unfold. Already a suit has been filed in Washington State requesting that Washington recognize same-sex marriages performed in Oregon under a now halted order issued by a rogue county chairman even though Washington law expressly precludes such unions.

The third and fourth cases also specifically involve challenges to the Defense of Marriage Act now passed by 40 States and I believe will ultimately be passed by all 50 States.

One of the standard crutches of those opposed to an amendment is that DOMA, the Defensive of Marriage Act, remains the law of the land. In the hearing before the Judiciary Committee several weeks ago, Senator DURBIN said that DOMA has ''never been challenged in court.'' This is simply untrue. DOMA has been challenged for violating the U.S. Constitution. It is being challenged right now.

The Defense of Marriage Act did two things. For the purposes of Federal benefits, such as Social Security, it reserved the definition of marriage to traditional unions, and, most importantly, it gave a blanket exception to the full faith and credit laws for marriage policy.

As it is now, the Constitution requires that, barring a rational public policy to the contrary, my marriage in Utah must be recognized in Virginia. DOMA ensures that States would not be compelled under the Constitution to recognize same-sex marriages performed in other States. The first prong of DOMA is being challenged in a Federal court. There is no doubt that a suit will eventually be filed challenging the constitutionality of DOMA's exception to the full faith and credit clause.

Fifth, State laws protecting traditional marriage will be challenged as violating the Federal Constitution. That the U.S. Constitution protects no such right will hardly be an obstacle to these suits. The death penalty is explicitly provided for in the fifth amendment, but that does not stop liberal interest groups from attempting to undo this through judicial action. They cannot get these matters through the elected representatives, so they always try to get these activist court judges to do their bidding for them and to enact legislation from the bench that they could never get through the elected representatives of the people. This is a perfect illustration.

The first amendment was obviously intended to guarantee political speech, but that does not stop the ACLU from getting nude dancing declared a constitutional right. Nothing in the Constitution guarantees a right to an abortion, but, through a creative analysis of the text, the Court was persuaded to create a right to privacy extended in recent years to include ''the right to define one's own concept of existence of the universe, and of the mystery of human life.''

These cases will inevitably wind up in Federal court. We cannot wash our hands of the implications of this issue's likely judicial resolution. As a Senator, my oath obligated me to protect the Constitution. That includes protecting it from corruption at the hands of the judiciary. These corruptions have become commonplace, and they are extremely difficult to undo once secured.

We have tried in the past, when constitutional meaning was violated in the moment-of-silence cases, in abortion rights cases, in religious liberty cases, in flag burning cases—all judicial activists' decisions—we attempted to undo these decisions and to restore the original Constitution. We have never been successful in succeeding along those lines. If this becomes the law of the land by judicial fiat of 4-to-3 verdict in the Massachusetts Supreme Court and because the full faith and credit clause will impose it on every other State in the Union, then we will have had the judges legislate for all of America against every State's law that we now must do away with traditional marriage or at least allow this new form of marriage.

Now, there is a constitutional responsibility, I would suggest to my colleagues in the Senate. In fact, once these decisions are in place, the very people who tell us to wait for the courts to decide abdicate their stewardship of the Constitution. It is a phony argument to say wait until the courts decide. I think it is all too clear that if we rely on that, we are going to have the courts tell Americans what

they must believe on this matter, and that is in contradiction to all of the elected representatives' rights to determine these types of issues.

As an example, consider the response of some Democratic lawmakers to the Supreme Court's rulings on abortion. In a recent letter to Roman Catholic Cardinal Theodore McCarrick of Washington, DC, 48 Catholic Members of the House of Representatives explained that:

[W]e live in a nation of laws and the Supreme Court has declared that our Constitution provides women with a right to an abortion. Members who vote for legislation consistent with that mandate are not acting contrary to our positions as faithful members of the Catholic Church.

Now, regardless of the beliefs of the Catholic Church, or even the merits of the arguments for or against abortion, this is a monumentally irresponsible attitude. These legislators, charged with protecting the Constitution, argue that they must vote against legislation that curtails abortion because the Supreme Court obligates them to. In other words, the Constitution, apparently, is what the Supreme Court says it is to these people.

Well, I think the Supreme Court has gotten it wrong on a number of occasions. But on this particular issue, when the Supreme Court rules that DOMA is unconstitutional, that will be one of the most monumentally wrongful decisions in the history of this country.

Now, with all due respect, these arguments that these Members of the House raised on the issue of abortion are absurd. Abraham Lincoln, the founder of my political party, understood this. When Chief Justice Roger Taney handed down his infamous Dred Scott decision, Lincoln did not defer to the Court. He did not accept its decision as a proper interpretation of the Constitution. He rejected it root and branch, and explained that:

[T]he candid citizen must confess that if the policy of the government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers.

That was Lincoln speaking, and we ought to follow that type of logic and that type of reasoning, that type of truth. We cannot just sit by and let the courts rule our country. That is not their job. Their job is to interpret the laws that we make as people who have to stand for reelection. We passed a law that is now approved by 40 States, and I believe will be approved by the other 10 States given time.

Now, this popular constitutional responsibility is a bipartisan affair. When Franklin Roosevelt's New Deal was repeatedly stymied by the Supreme Court, he did not throw up his hands and explain that the Depression would have to continue because the Supreme Court did not allow him to regulate the economy. Of course, he did not. Rather, he continued to push his policies and explained to the American people why the Court's interpretation of the Constitution was wrong.

The Members of this body have a sacred trust as constitutional officials, and we must take seriously the results of our inaction. If we fail to pass an amendment, and we delegate our authority over this matter to the Supreme Court of the United States, the decision will come as no surprise. On this point, the Justices have made themselves amply clear. There is no reason to believe that State marriage laws protecting traditional marriage will be allowed to stand.

In the Lawrence decision handed down just last year, the Supreme Court announced its intentions by effectively overturning Bowers v. Hardwick. Bowers was hardly an antique. It was decided only in 1986, and it basically put the brakes on 20 years of judicially created privacy rights. That decision concluded that the States remained able to regulate certain sexual practices in order to protect the health, safety, and morals within its political community.

But in Lawrence the court reversed course. There, the Court concluded that:

Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct, and therefore, our laws and tradition afford constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education.

Now, according to the Court, in Lawrence, these are fundamental rights, and the States must, therefore, advance a compelling reason for any legislation that denies them. Unfortunately, in Romer v. Evans, the Court has previously held that any such legislation could only be based on an ''irrational animus'' toward homosexuals.

So what, then, of same-sex marriage, which denies to homosexuals the privilege of marrying? In his dissent in Lawrence, Justice Scalia understood that:

State laws against . . . same-sex marriage . . . are likewise sustainable only in light of Bowers' validation of laws based on moral choices. Every single one of these laws is called into question by today's decision; the Court makes no effort to cabin the scope of its decision to exclude them from its holding.

Those who favored the decision at the time said it did no such thing. Privately, however, they understood exactly what it meant. And the judges in the Goodridge case were quick studies. In the decision to rewrite the Massachusetts Constitution to compel same-sex marriage, the Goodridge court relied heavily on these rulings. Their conclusions that marriage is a fundamental right and that the decision to restrict that right is patently irrational were taken straight out of the U.S. Supreme Court playbook. Goodridge has shown us the way. DOMA, the Defense of Marriage Act, will not stand, and absent DOMA, the States will have to defend their marriage laws on their own. Their success, of course, is in serious doubt.

I do not subscribe to the conclusions of the courts. There is an obviously rational basis for legislation that protects traditional marriage. Only a discriminatory animus against people who hold any religious beliefs at all could lead someone to conclude otherwise. For a simple and compelling reason, traditional marriage has been a civilizational anchor for thousands of years. Society has an interest in the future generations created by men and women.

Decoupling procreation from marriage in order to make some people feel more accepted denies the very purpose of marriage itself. Marriages between men and women are the essential institutions to which future generations are produced and reared. Political communities are only as solid as their foundation, and these families and homes, the first schoolyards of citizenship, are essential for the future of republican government.

The fact that so many in the Democratic Party are openly opposed to same-sex marriage should undercut the conclusion that the desire to maintain traditional marriage is grounded simply in rank bigotry.

Let me refer to this chart again. These are leading Democrats who have spoken out on same-sex marriage. The first one is Senator KERRY:

I believe marriage is between a man and a woman. I oppose gay marriage and disagree with the Massachusetts Court's decision.

I don't think it could be any more clear.

Senator DASCHLE:

The word ''marriage'' means only a legal union between one man and one woman as a husband and wife.

How about Representative RICHARD GEPHARDT:

I do not support gay marriage.

Or how about Governor Bill Richardson of New Mexico:

I do believe that marriage is between a man and woman. So I oppose same-sex marriage.

Or how about former President Bill Clinton:

I have long opposed governmental recognition of same-gender marriages.

Or how about former Vice President Al Gore:

I favor protecting the institution of marriage as it has been understood between a man and a woman.

These are leading Democrats, who I personally respect in many ways, who have come out against this very dramatic change in traditional marriage that is occurring in our society today.

I have to say that I think JOHN KERRY was right in making that statement at the time. I think TOM DASCHLE was right. I think RICHARD GEPHARDT was right. I think Governor Bill Richardson was right. President Bill Clinton was right, and Vice President Al Gore was right when he said that. These Democrats are merely responding to a certain common sense articulated by the American people, and that

common sense has expressed itself in legislative actions in nearly every State.

The Supreme Court of the United States, in order to defend itself against the accusation that it is determining constitutional meaning from their morning reading of the New York Times, has taken to defending only those rights supported by a developing national consensus. In this case, there is a developing national consensus on the issue of same-sex marriage, but it is developing in the other direction.

State after State has acted to protect this vital institution of traditional marriage. Still it would be a fool's wager to rely on the Supreme Court to affirm this consensus of all the people out there. When California acted through the superdemocratic process of a Statewide referendum to protect traditional marriage, that did not stop the liberal mayor of San Francisco from defying this law and instituting his own preferred policy preference instead. When it comes to a liberal agenda at odds with the beliefs of average Americans, legal impediments or even simple respect for these popular decisions do not long stand in the way.

It is important to mention another effect of abandoning our definition of marriage. We have vast numbers of institutions and individuals in our society who will be stigmatized and marginalized by courts trying to enforce a new moral norm. A group of notable legal scholars in Massachusetts, including Mary Ann Glendon, warned about the danger to religious institutions in this country in a recent legal opinion.

They said:

Precedent from our own history and that of other nations suggests that religious institutions could even be at risk of losing tax exempt status, academic accreditation, and media licenses, and could face charges of violating human rights codes or hate speech laws.

Is this the road we want to go down? Gays and lesbians have a right to live as they choose. I would be the first to say that. But I am sorry, they do not have the right to define marriage and to redefine it away from the concepts of traditional marriage that have been in existence for over 5,000 years. I have been a leader in advocating hate crimes legislation against gays and lesbians. I know prejudice remains against gay and lesbian citizens. I reject each and every substantiation of it. But this amendment is not about discrimination. It is not about prejudice. It is about safeguarding the best environment for our children.

African-American and Hispanic leaders, Catholics and Jews, Democrats and Republicans, people from every State, religion, and every walk of life support traditional marriage as the ideal for this very same reason. I do not doubt alternative families can lovingly raise children, but decades of study show children do best when raised by a father and a mother.

My own faith, which has been badly maligned through the years—and I have personally been badly maligned, even by some who should be allies—only yesterday or within this week had this to say. It was issued on July 7:

The First Presidency of the Church of Jesus Christ of Latter-day Saints issued the follow statement today. This is a statement of principle in anticipation of the expected debate over same gender marriage. It is not an endorsement of any specific amendment.

The Church of Jesus Christ of Latter-day Saints favors a constitutional amendment preserving marriage as the lawful union of a man and a woman.

I have no doubt my faith and so many others would prefer and recognize the need of a constitutional amendment to resolve this problem. It is the right way to do it. For us to ignore it means we are abandoning our responsibilities. Given the acknowledged importance of this institution, popular reservations about undoing it should be given the utmost importance. Same-sex marriage is an unproven experiment, though other nations have had some experience with it.

The Netherlands has recognized same-sex unions since 2001 and registered partnerships since 1998. Since those reforms began, there has been a marked decline in marriage culture. Just yesterday, in a letter published in a Dutch newspaper, a group of respected academics from the fields of social science, philosophy and law made a modest assertion. The decision to recognize same-sex marriage depended on the creation of a social and legal separation between the ideas of marriage and parenting. And in that time, there has been, in their words, a spectacular rise in the number of illegitimate births. These scholars do not argue that this rise is solely attributable to the decision to recognize same-sex partnerships. But the correlation is undeniable. They conclude that further research is needed to establish the relative importance of all the factors.

Precisely! The jury is out on what the effects on children and society will be and only legislatures are institutionally-equipped to make these decisions. If nothing else, given the uncertainty of a radical change in a fundamental institution like marriage, popular representatives should be given deference on this issue. However, recent actions by courts prove that no such deference is being given.

This is why we need an amendment. Without an amendment to the Constitution, same-sex marriage will be imposed by judges on an American people who would not choose this institution for themselves.

Here is the language of the amendment. It contains two simple sentences:

Marriage in the United States shall consist only of the union of a man and a woman.

The second sentence:

Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman.

The amendment does nothing more than preserve perhaps the most fundamental relationship in society. The amendment does not violate the principles of Federalism and limited government.

Among other things the Constitution guaranteed to the people a right to govern themselves; in most instances, through their State governments. The Constitution protected traditional State prerogatives over subjects such as marriage and family policy. And should those be in danger, the Constitution guaranteed to the people a right to resecure these prerogatives through the amendment process. This is precisely the situation we face here.

The States have acted on this issue time and time again. They have rejected same-sex marriage. Yet we face legal advocates and a judicial system that care little for these judgments and that are ready and willing to substitute their own judgments for the common sense of the American citizenry.

In the end, the only argument against this amendment is that the Supreme Court is the sole institution that determines the meaning of our Constitution. I reject that conclusion. It grossly misstates the history of this Nation. The Alien and Sedition Acts were repealed through legislative actions, not through the courts.

The Civil War amendments that guaranteed citizenship and the right to vote to black citizens came through Congress and the state legislatures. The New Deal protected Americans in a time of need. The 1964 Civil Rights Act promoted the rights of racial minorities.

President Ronald Reagan readjusted the New Deal settlement, protecting the rights of small business owners and encouraging property ownership and innovation. And in recent years this body has acted to protect the rights of female victims of violence, the victims of hate crimes, and the rights of disabled citizens.

The popular branches of Government, not the courts, are the primary guarantors of our rights. As Senators, we are obligated to interpret the Constitution, and in this case we are not denying rights to same-sex couples, but protecting and extending the right of citizens to govern themselves and to determine marriage policy on their own, and to preserve traditional marriage.

To delay action on the marriage amendment now is like agreeing to repair a cracked dam only after it has burst and forever changed the landscape. We know what the legal situation is on this issue and we know what we have to do to repair it. A Constitutional amendment is the only viable alternative to protect this most foundational relationship in society. We must act, and we must act now.

We need to send a message to our children about marriage and traditional life and values. The American

people must have a voice. The people, through their elected representatives—not judges—should decide the future of marriage.

Montana, Louisiana, West Virginia, Colorado, Washington, Maine, North Dakota, Ohio, New Hampshire, Nebraska, South Carolina, Arkansas, Alaska, Pennsylvania.

All of these states and many others have made independent determinations to protect same-sex marriage. Without an amendment to the Constitution, all that work will be for naught. They have made those independent determinations to protect traditional marriage, not same-sex marriage. I respectfully ask my colleagues to do the right thing here and to guarantee that the right to self-government on important issues such as this remains with the people rather than in the courts.

This is an important issue. Anybody who argues this issue isn't as important as anything that can possibly come before this body fails to recognize that traditional marriage and the rights of families and children are the most important elements of our societal function and we need to protect them. We need to do it now and not wait until 2 or 3 years from now when all this becomes mush and nothing will be able to be done, such as on other bills that have occurred through the years.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Madam President, I understand we will be going back and forth. I wondered, because I have a time schedule, if I might ask unanimous consent that after the Senator from Vermont speaks—might I ask how long he plans to speak?

Mr. LEAHY. I can't imagine I will speak much more than probably 10, 15 minutes at most.

Mr. BOND. Might I ask that I be recognized for 5 minutes and then the previous order, which was for the Senator from Texas and the Senator from Alabama to be recognized.

The PRESIDING OFFICER. There is no such order in effect.

Mr. BOND. I ask unanimous consent to make such a request.

Mr. LEAHY. Following me.

Mr. BOND. Following the Senator from Vermont.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Vermont is recognized.

(The remarks of Mr. LEAHY pertaining to the introduction of S. 2636 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

FEDERAL BUDGET RESOLUTION

Mr. LEAHY. Madam President, there is another important issue we have before the Senate. We don't yet have a Federal budget resolution, even though we were supposed to have done that this spring.

It is July. We have considered only one appropriations bill, and that has not been resolved with the House. We have not yet even considered the other 12 appropriations bills, including the Homeland Security appropriations bill. These are usually considered must-pass legislation, whether there is a Republican-controlled Congress or a Democratic-controlled Congress. Instead of passing these bills, however, we sit around not doing any work on the things that we absolutely need to do. We are working on political matters. The divisive constitutional amendment to federalize marriage is an example of that.

For 215 years, we have left it up to States to define marriage. All of a sudden, are we going to tell them they do not know what they are doing? Are we going to take over the marriage issue from the States and define it for them? Are we going to treat this as a matter of urgency, that we must proceed to immediately while setting aside homeland security and the budget?

Heck, the Senate Judiciary Committee, which held a few hearings on this issue, has not even considered the language of this Federal Marriage Amendment. We have not even voted on it in the Republican-controlled Judiciary Committee. The fact that the Committee has been bypassed, and the FMA brought immediately to the Senate floor, is an unmistakable sign that political expediency—and haste in the furtherance of political expediency—is why it is here.

Political expediency, whatever it takes, seems to be the leadership's guidepost, not the pressing needs of the country for homeland security funding or a budget. I am afraid that the paramount thing for the Republican leaders in this body at the moment are such divisive matters as federalizing marriage law by constitutional amendment. I remember the days when the Republican Party would say we are going to keep the Federal Government out of the doings of the States. Well, now we seem not only to politicize judicial nominations, making independent judges a wing of the Republican Party, but to politicize the Constitution itself.

I think it is wrong. I think it is corrosive to seek partisan advantage at the expense of the independent Federal judiciary or our national charter, the Constitution. Maybe we should have a corollary to the Thurmond rule, which is that in Presidential elections, after the Fourth of July we do not consider judicial nominations, except by unanimous consent. Maybe we should have something called the ''Durbin rule.''

The senior Senator from Illinois observed that we should prohibit consideration of constitutional amendments within 6 months of a Presidential election. I think he is right in pointing out that the Constitution is too important to be made a bulletin board for campaign sloganeering. Somehow we should find a way to restrain the impulse of some to politicize the Constitution. I think we have 50 or 60 proposed constitutional amendments before the Congress right now.

While we are doing this political posturing, let us talk about what we might have been doing. I will take one issue, homeland security. This week, we received further warnings from the Republican administration about impending terrorist attacks. So what are we doing in the Senate to respond to those attacks? Why, we are going to launch a debate over gay marriage.

The Homeland Security appropriations bill is stalled, but notwithstanding the warnings by the administration that there are impending terrorist attacks, first and foremost the Senate has to have a constitutional amendment banning gay marriage. We cannot take time to bring up the Homeland Security bill, something that will probably pass in a day and a half.

If the American people are uneasy about their security during the summer traveling season, that may be because of the conflicting signals they are receiving from the Government. At least this time it was Secretary Ridge and not the Attorney General who appeared on our Nation's television screens to warn of an impending al-Qaida attack. We may remember a few weeks ago, when the Attorney General made dire warnings the same day that Secretary Ridge, the Secretary of Homeland Security, told Americans to go out and have some fun this summer. The American people must wonder what is going on. They must find it hard to believe what is going on in this Senate, how we are using our time now.

I believe Congress should get on with providing the funding needed to address our security vulnerabilities, even at the cost of forsaking some of the President's tax cuts or a fruitless debate on marriage.

We have heard the administration say we are in dire danger. We have given them everything they have wanted: the Homeland Security Department; we have gone deep into debt; we have actually threatened the Social Security fund by our huge deficits to give hundreds of billions of dollars on the fight against terrorism.

It appears we simply cannot meet our needs with the resources we have available. But what do we do? Do we address this in the Senate, the greatest deliberative body on Earth? Heck, no. We are going to talk about gay marriages.

Of course, the Republican Leadership has a history of not getting too concerned about the substance of homeland security issues. The issue of homeland security has been politicized from the start, and even the creation of the Department of Homeland Security is a case study on the political partisanship of my friends in the Republican Party. We may recall that at first they resisted strongly the idea of having a Department of Homeland Security especially the President himself.

Then we heard the partisan attacks from many Republicans on the 9/11 Commission, which the administration allowed to go forward in the first place only after great resistance.

I hope and pray we can return to a time as we used to do, and as it was when I came to the Senate, when security issues were not used for partisan effect or political benefit. Given the track record of this administration for secrecy, unilateralism, overreaching, and abject partisanship, however, I certainly understand why many question their assertions. An administration that can hide legal memoranda justifying torture and then, when forced to acknowledge them, disavow them, does not earn our trust. An administration that reports that terrorism had decreased last year and then, when questioned, had to admit that it was wrong and reissue the report has basic credibility problems.

So I wish we would turn away from these divisive legislative maneuvers and work together on the Nation's agenda. The senior member of the Senate, Senator BYRD, said it all better than I can. He spoke yesterday afternoon about the need to get about our business and the Nation's business. Senator BYRD offered wise counsel to the Republican leadership. I wish it had been listened to.

Roll Call reported earlier this week that this week's activities amount to a showdown prompted by the Republicans' desire for a wedge issue they can use with undecided voters in November. That is a shame and a sham. When we should be considering measures to strengthen homeland security, Republican partisans are focused on devising wedge issues for partisan political purposes. Well, that is wrong. I urge the Republican administration and the Republican leaders in the House and the Senate to come back to the work of Congress, not the work of political partisans. Let us complete our work for the American people.

The Senate does not have to be a battlefront for the Presidential campaign. There is plenty of time for that. In fact, I wonder if we are not setting ourselves up for people to say during the election season that the Republican-controlled Congress did not do the work of the people. Let us get on with doing it. One of the first things we can do is take the stalled Homeland Security appropriations bill and actually vote on it.

If the hundreds of billions of dollars we have spent so far have not made us safe, then let us debate that and find what will.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

REPORT OF SELECT COMMITTEE ON INTELLIGENCE

Mr. BOND. Madam President, I am very pleased to announce that today, about 90 minutes ago, the report of the Select Committee on Intelligence on the pre-Iraq war has finally been released. We were bound not to talk about it until it was released at 10:30 today. Our staff has done an excellent job reviewing 15,000 documents and 200 witnesses, going back time and again to get the facts straight.

We came up with the unanimous conclusions that I think this body and our friends around the country, including the media, ought to pay attention to what is actually in that report. Some of my colleagues spent yesterday talking about the report and putting their spin on it.

I have been very distressed that the spin had nothing to do with the facts that are actually in the report. It is a lengthy report. For the benefit of my colleagues who have not been on the Intelligence Committee, let me tell you a couple of things that were in the report.

First, the intelligence used by the President, the Vice President, the chairman, and ranking member of the Intelligence Committee, the chairman and ranking member of the Armed Services Committee, along with the rest of us, was the intelligence given to them by the CIA. This was intelligence given to them through three administrations. On the basis of that, on the floor the statement was made on September 19, 2002:

We begin with the common belief that Saddam Hussein is a tyrant and a threat to the peace and stability of the region. He has ignored the mandate of the United Nations and is building weapons of mass destruction and the means of delivering them.

Senator LEVIN stated that.

On October 10, 2002:

There is unmistakable evidence that Saddam Hussein is working aggressively to develop nuclear weapons and will likely have nuclear weapons within the next 5 years. We also should remember we have always underestimated the progress Saddam has made in the development of weapons of mass destruction.

Senator JAY ROCKEFELLER stated that.

These were conclusions that came from the best intelligence we had available, that other intelligence agencies had available. Actually, if you look at it, Iraqi Survey Group leader David Kay, when he came back to the United States, said we know that Iraq was a far more dangerous place, even than we had learned from our intelligence because of other things that were going on that were not fully reported.

We identified problems in this report. There was no human intelligence, which you absolutely need. There was faulty analysis in sharing of information among the various agencies. Some analysts did not fully qualify the information that was not confirmed.

But despite the breathless headlines, despite the political charges that are being made on the other side of the aisle, no one was pressured to change judgments or reach specific judgments. In fact, the committee interviewed over 200 people, searching, searching, and searching for those who might be pressured.

Chairman ROBERTS asked repeatedly, publicly and in hearings, that anybody who had information on pressure to change conclusions, come forward. Nobody did. They chased rabbits all through every brush pile that could be imagined. Anybody who had an idea of pressure was challenged. Do you know what they found? There was tremendous pressure on the analysts because they had not put together the right information prior to 9/11. They felt pressure, but they all said it was pressure to get it right. They said it is the job of the intelligence community to respond to the most searching questions of the people, the policymakers who use it.

Let me cite three conclusions from the report, which I think are very important on intelligence. From page 284: conclusion 83:

The committee did not find any evidence that administration officials attempted to coerce, influence, or pressure analysts to change their judgments related to Iraq's weapons of mass destruction capabilities.

Page 285, conclusion 84:

The committee found no evidence that the Vice President's visits to the Central Intelligence Agency were attempts to pressure analysts, were perceived as intended to pressure analysts by those who participated in the briefings of Iraq's weapons of mass destruction programs, or did pressure analysts to change their assessments.

On page 359, conclusion 102:

The committee found that none of the analysts or other people interviewed by the committee said they were pressured to change their conclusions related to Iraq's links to terrorism. After 9/11, analysts were under tremendous pressure to make correct assessments to avoid missing a credible threat and to avoid an intelligence failure.

These are the findings upon which we unanimously agreed. I think the Vice President and others who have been politically maligned are entitled to an apology.

Do you know what this all comes back to? This comes back to a plan that we learned about on November 6, 2003. I have in my mind a FOX News report on this memo from a Democratic staffer. Nobody has denied it. In fact, they are playing their plays out of that game book now.

It talks about:

No. 1: Pull the majority along as far as we can on issues that may lead to major new disclosures. . . .

No. 2: Assiduously prepare Democratic ''additional views'' to attach to any interim or final reports. . . .

No. 3: We will identify the most exaggerated claims and contrast them with the intelligence estimates that have since been declassified. Our additional views will also, among other things, castigate the majority for seeking to limit the scope of the inquiry.

That is exactly what the game plan is that they are following. When you look at the conclusion, the summary of that memo, it says:

Intelligence issues are clearly secondary to the public's concern regarding the insurgency in Iraq. Yet, we have an important

role to play in revealing the misleading—if not flagrantly dishonest methods and motives—of senior administration officials who made the case for a unilateral, preemptive war. The approach outlined above seems to offer the best prospects for exposing the administration's dubious motives and methods.

I ask unanimous consent that be printed in the RECORD following my statement.

The PRESIDING OFFICER (Mr. HATCH). Without objection, it is so ordered.

(See exhibit 1.)

Mr. BOND. To sum it up, we are at war with terrorists. The terrorists were in Iraq. They had access to the weapons of mass destruction that Saddam Hussein had produced in the past and were willing to produce in the future. We have received increased briefings on recent threats in the United States. The greatest danger we fear is that Saddam Hussein, had we not taken him out, would be supplying those terrorists with chemical and biological weapons.

Our troops remain under fire, but some on this floor and some commentators I have heard seem to be more interested in politicizing the problems in the Intelligence Committee rather than getting at the root of the problem. I hope we can put these partisan charges aside because there is much work to do to improve the gathering, the analysis, and the dissemination of intelligence. For the good of this country, we need to put behind us this partisan effort to fingerpoint and make accusations that have been explicitly disabused and disavowed by this intelligence report.

I commend the staff of the Intelligence Committee. I thank the many thousands of dedicated people in the intelligence community who are doing their best, under difficult circumstances, to get information under systems that were not adequate for the needs at the time. We need to build a system where we get human intelligence, where we analyze it better, and where we share it among agencies that we have not done adequately in the past.

I thank my colleagues from Texas and Alabama for their courtesy.

EXHIBIT 1

RAW DATA: DEM MEMO ON IRAQ INTEL

[From FOX News, Nov. 6, 2003]

We have carefully reviewed our options under the rules and believe we have identified the best approach. Our plan is as follows:

(1) Pull the majority along as far as we can on issues that may lead to major new disclosures regarding improper or questionable conduct by administration officials. We are having some success in that regard. For example, in addition to the president's State of the Union speech, the chairman has agreed to look at the activities of the Office of the Secretary of Defense as well as Secretary Bolton's office at the State Department. The fact that the chairman supports our investigations into these offices and co-signs our requests for information is helpful and potentially crucial. We don't know what we will find but our prospects for getting the access we seek is far greater when we have the backing of the majority. (Note: we can verbally mention some of the intriguing leads we are pursuing.)

(2) Assiduously prepare Democratic ''additional views'' to attach to any interim or final reports the committee may release. Committee rules provide this opportunity and we intend to take full advantage of it. In that regard, we have already compiled all the public statements on Iraq made by senior administration officials. We will identify the most exaggerated claims and contrast them with the intelligence estimates that have since been declassified. Our additional views will also, among other things, castigate the majority for seeking to limit the scope of the inquiry. The Democrats will then be in a strong position to reopen the question of establishing an independent commission (i.e. the Corzine amendment).

(3) Prepare to launch an independent investigation when it becomes clear we have exhausted the opportunity to usefully collaborate with the majority. We can pull the trigger on an independent investigation at any time—but we can only do so once. The best time to do so will probably be next year either:

(A) After we have already released our additional views on an interim report—thereby providing as many as three opportunities to make our case to the public: (1) additional views on the interim report; (2) announcement of our independent investigation; and (3) additional views on the final investigation; or

(B) Once we identify solid leads the majority does not want to pursue. We could attract more coverage and have greater credibility in that context than one in which we simply launch an independent investigation based on principled but vague notions regarding the ''use'' of intelligence.

In the meantime, even without a specifically authorized independent investigation, we continue to act independently when we encounter foot-dragging on the part of the majority. For example, the FBI Niger investigation was done solely at the request of the vice chairman; we have independently submitted written questions to DoD; and we are preparing further independent requests for information.

SUMMARY

Intelligence issues are clearly secondary to the public's concern regarding the insurgency in Iraq. Yet, we have an important role to play in the revealing the misleading—if not flagrantly dishonest methods and motives—of the senior administration officials who made the case for a unilateral, preemptive war. The approach outline above seems to offer the best prospect for exposing the administration's dubious motives and methods.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. I ask unanimous consent to speak for up to 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROPOSING AN AMENDMENT TO THE CONSTITUTION RELATING TO MARRIAGE

Mr. CORNYN. First, Madam President, my remarks pertain to the issue of marriage. Of course, I have been here this morning while the distinguished Senator, the current occupant of the chair, the chairman of the Senate Judiciary Committee, comprehensively laid out the reasons why this is an important debate.

I have also heard Senator ALLARD from Colorado and Senator SMITH from Oregon speak about this issue. I would like to associate myself with each of those comments. But I want to explain briefly my own reasons why I believe this is such an important issue.

First, I would like to respond to the comments made by the ranking member, the Senator from Vermont, the ranking member of the Judiciary Committee. This is something that the chairman of the Judiciary Committee has already touched on, but I think it is so important. We keep hearing the same argument over and over again, so we really need to hit this issue hard.

But I think it is so important.

It is amazing to me to hear the Senator from Vermont and others say we have no time to talk about the issue of marriage and the American family because there are more important issues we ought to be debating. The truth is, while there have been Members on this side of the aisle talking about this issue all morning long, there has been virtually dead silence on the other side of the aisle.

Then we hear comments that are made about, well, this really isn't that important, and there are more important issues for us to talk about: homeland security, the budget, appropriations, and the like.

But I concur with the comments made this morning by the present occupant of the chair, the chairman of the Senate Judiciary Committee, that there is no issue more important in this country today than the American family and preserving the traditional institution of marriage as the most basic building block in our society, one created for children in their best interests.

You know this common theme, that this issue is not important; it is not one that has been demonstrated by the lack of presence on the Senate floor by our colleagues on the other side of the aisle, or even the overt comments made about this not being an important issue. We have had numerous hearings in the Senate Judiciary Committee and the Subcommittee on the Constitution, which I am honored to chair, and other committees in the Senate. Essentially, we have been met with either overt hostility or, in many instances no-shows, where Senators have chosen to boycott a good-faith desire to have an honest discussion about this issue and the threat that has been posed to the traditional family.

I, for one, am shocked and amazed at the attitude. Unfortunately, it is the reality we confront today and which the American family confronts.

Of course, I have been concerned about this issue, as I think most Americans have been, for a long time. But I note that in January of 1999 when I served as Texas Attorney General, one of my responsibilities—it was one of the few attorney general offices that had this responsibility—was child support enforcement. It was my obligation, my duty, my privilege to enforce

child support orders for about 1.2 million Texas children.

It is no secret to any of us that due to the growth of out-of-wedlock childbirths now—about one out of every three children born in America are born outside of marriage; unfortunately, a fact that we all bemoan but a real and present reality—that half of the marriages end in divorce; that the American family is in fragile condition.

That is one reason I was so concerned when on May 17, 2004, we saw an assault launched on the American family and the institution of marriage. But the truth is, we should have seen this coming. There were a few people who did, but most did not.

I worry that the American family will not be able to sustain itself against this continued attempt to marginalize the importance of traditional families and the importance of every child having a loving and supportive mother and father, which we all know as a matter of common sense, a matter of observation, and as a matter of social science is the optimal situation for a child to be raised and grow up in.

I would be the first to say that there are heroic parents—single parents and children living in other arrangements—that adults do a heroic job of raising children in other-than-traditional family households. I congratulate them, and we ought to do everything we can to support them in every way we can because we know the optimal is not always possible.

But that shouldn't cause us to shy away from or refuse to defend the importance of the traditional family unit as the optimal situation in which children are born and raised into productive adults and have a chance to live up to their God-given potential.

We know that, as a sad fact of social science, children who are raised in a less than optimal situation through no fault of their own are at higher risk, that they are at higher risk of a host of social ills. We hope and pray that they may overcome these higher risks. But we know, tragically, that too many cannot. We see the evidence of that with dropout students who fail to pursue their education because they simply drop out of school, children who become involved in drugs and other self-destructive activity, children engaged in premature sexual experimentation and pregnancy, and other problems that affect their ability to grow up as fully productive and contributing citizens.

So we should not shy away from this debate when it comes to talking about what is optimal, what is in the best interests of American children and American families.

I believe that fundamentally is what this debate is about.

Some people have asked me, Why is it that some seem to shy away from this debate? I will tell you this: I think part of the reason is that some people just prefer not to be called names or to have their motives cast in doubt. But I will tell you this: I believe with all my heart that the people of this country believe in two fundamental propositions in addition to others.

No. 1, the American people believe in the essential dignity and worth of every human being.

At the same time, I think the American people overwhelmingly believe in the importance of traditional marriage and the traditional family as the bedrock institution of our society and in the best interests of children. I don't think there is any conflict there. I think you can believe in both at the same time.

This is not about phobias. This is not about a desire to hurt anyone. This is a discussion—an important discussion that we ought to have and we are going to have about the institution of the American family and traditional marriage as the optimal situation.

I fail to see how any one of us can remain neutral or on the sidelines when this debate is going forward. Indeed, we did not choose to engage in this debate at this time on this amendment. There is a difference between launching an attack and acting in self-defense. The American people know the difference. But I believe we must answer the call to action now on behalf of the American family.

It was on May 17, 2004, when the Massachusetts Supreme Court declared traditional marriage—remember these words because these are important—''a stain that must be eradicated.''

The Supreme Court, four members, the majority of that court, called it invidious discrimination to limit marriage to persons of the opposite sex, what we call traditional marriage.

They said ''limiting traditional marriage between members of the opposite sex lacks any rational basis.''

As has already been noted and as we observed on cable television and the nightly news, this attack on the family and on traditional marriage that occurred in Massachusetts was joined by lawless officials in San Francisco and elsewhere around the country.

Soon the American people saw same-sex unions occurring on our television screens, in our newspapers, and reported on the radio.

Tragically, it is not the adults who pay the price for the marginalization of marriage as our most basic societal institution, it is our children who pay and pay and pay some more. Social science confirms what common sense and simple observation dictate: When the institution of marriage is marginalized, children are at higher risk, as I mentioned before. In short, they are at higher risk for the sort of consequences that will follow them for the rest of their lives.

When the Massachusetts Supreme Court, following the decision of the U.S. Supreme Court, which I will discuss briefly in a minute, launched into this radical social experiment in redefining the institution of marriage, we have some glimpse of what that experiment may yield by what social scientists have been able to evaluate in Europe and elsewhere. We have seen what happens when government pretends this problem does not exist until it is too late. We cannot afford to look back years from now and say we stood idly by while the American family was marginalized into irrelevance.

How did we get here? How in the world did the Massachusetts Supreme Court, on May 17, 2004, decide that traditional marriage was a stain that must be eradicated, represented invidious discrimination, and had no rational basis? They did not dream it up on their own. The origins of this language and this rationale for that decision came from the case of Lawrence v. Texas. I have excerpted a segment of Justice Kennedy's opinion for the majority of the Court because this is the germ, this is the seed out of which this concept has grown and which now, as I have stated, threatens to jeopardize the American family, further marginalizing the American family and, indeed, the traditional institution of marriage.

Relying on an earlier decision in Planned Parenthood of Southeastern Pennsylvania v. Casey, the Court reaffirmed the substantive force of the liberty protected by the due process clause. For nonlawyers, they were relying on this earlier decision and said that they were reaffirming the basis of that decision here. The Court went on to say:

> The Casey decision again confirmed that our laws and traditions afford constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education.

In this following sentence, stated in the same place where they talked about the liberty interests that protect marriage, they conclude by saying:

> Persons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do.

As Justice Scalia noted in his dissent, it was this juxtaposition of marriage and this right of individual autonomy in one's relationships that extends not just to heterosexuals in marriage but also to homosexuals in their relationships that is the basis for the Court's decision here. Not surprisingly, that was the very case cited by the Massachusetts Supreme Court in the Goodridge case when they held that traditional marriage was a stain that must be eradicated, that it represents invidious discriminations to allow heterosexuals to enter into that relationship but not homosexuals, and said that limiting marriage to traditional marriage between persons of the opposite sex had no rational basis.

Of course, the American people have not had a chance to express their views on this issue. As was pointed out eloquently earlier, neither did the people of Massachusetts. As it turned out, when the people of Massachusetts had

the chance to have their voice heard on this issue, they chose to overrule the decision of the Massachusetts Supreme Court. The problem is in Massachusetts a constitutional amendment takes two consecutive sessions of the legislature, and they cannot amend the constitution until 2006 in that State. In the meantime, as we all know, since May 17, clerks have been ordered to issue licenses for same-sex marriages, and this pending constitutional amendment of 2006 is too late to effectively let the people's voice be heard and control this debate.

We have seen what some have called ''government by the judiciary.'' We believe in our fundamental constitutional documents. Our Constitution provides for government of the people, by the people, and for the people, not government of the judiciary, by the judiciary, and for the judiciary but government of the people, by the people, and for the people. When we see an overturning, in essence, of the Massachusetts Constitution, 224 years after it was written, by a radical redefinition of marriage by a majority on the Massachusetts Supreme Court, it amazes me some of our colleagues would expect us to stand on the sidelines, mute, and expect us to be mere spectators in what is perhaps one of the most important debates we could possibly be having in this body or anywhere else around this country, and that is the preservation of the American family and the preservation of traditional marriage as the most important stabilizing factor in our society in a relationship that is most important for the raising and nurturing of children.

Some have suggested that this is not a Federal issue, this is not something the U.S. Congress should have anything to do with. Some have said in good faith—I think naively so but in good faith—well, let Massachusetts deal with that; that does not affect us. As already has been pointed out, people have married in Massachusetts under Massachusetts law and moved to 46 different States. Indeed, there are a number of lawsuits—I think at last count roughly nine lawsuits, maybe more—where those persons, same-sex couples who married in Massachusetts, have moved to other States and filed lawsuits seeking to require those States to recognize the validity of those marriages even though the laws of those other States do not recognize same-sex marriage.

As was pointed out a little earlier, we should have seen this coming. It has been coming for quite some time. It really did not start with Lawrence v. Texas. Some of the most well-known legal scholars in the United States, such as Laurence Tribe, have been advocating this position all along. He concludes after Lawrence, as he did beforehand, that this was the death knell for traditional marriage in America. But he said, ''You'd have to be tone deaf not to get the message from Lawrence that anything that invites people to give same-sex couples less than full respect is constitutionally suspect.'' That is what left-leaning liberal legal scholars have been saying for some time and what the Supreme Court embraced in Lawrence and now we have seen carried to the next step, the logical conclusion, by the Goodridge court in Massachusetts.

But I guess what causes me such disappointment at the absence of our colleagues on the other side of the aisle and of their statements—those who have come to the floor and those who have shown up in committee—is saying this is not an important issue, that there are more important issues.

This is not a partisan issue. The reason I say that is because in 1996 the Congress passed—indeed, the Senate passed, by 85 votes—the Defense of Marriage Act which, as a matter of Federal law, defines marriage as the union of one man and one woman.

Now what I fear is our colleagues who oppose this amendment, who voted for the Defense of Marriage Act—they understand the Defense of Marriage Act is under threat and that a constitutional challenge will be made to the Defense of Marriage Act based on this Lawrence rationale. Indeed, that has already occurred in the States of Utah, Florida, and Nebraska, a Federal constitutional challenge that says: Your laws that limit marriage to traditional marriage, a marriage between one man and one woman, now violate the Constitution, using the very rationale I described earlier in Lawrence, agreeing, perhaps, with Professor Tribe. We are told this is not important, this is not worthy of debate, and there are other things that are more important. I disagree. I think the American people, when this finally begins to sink in, will disagree as well.

Some people have asked me: Why is it there is not a greater popular uprising and outcry about this issue? Well, I remember when we saw people getting married in San Francisco, same-sex couples there, and in Massachusetts, there was sort of a blip on the radar screen. Polls showed that the American people, once they realized what was going on, disapproved of what they saw. But, of course, we are all busy raising families and going to work, and this perhaps has not been something that has been sustained in their consciousness and their awareness. But, indeed, this is an important issue and one that is under attack.

Some have said, though: Why can't we let Massachusetts do its own thing? And why can't each State decide for itself what its policy will be? Well, we have seen, because of same-sex couples getting married in Massachusetts and moving to other States, that is not possible. Realistically that is not possible.

If you think about another aspect of what we call family law—let's say the law of adoption—if one State says you can adopt a child under certain circumstances, when that family moves to another State—when they move to Texas, Utah, or somewhere else—we recognize the validity of that adoption, of that family law decision.

What I believe is some of our colleagues, indeed some of the American people, are, No. 1, in shock at this radical transformation in our society's most basic institution. Secondly, after shock, people sometimes are in denial. They do not want to believe it. They do not want to think they are going to have to deal with it. And then, after a while, the reality begins to sink in that this is indeed something that needs to be addressed.

There are some who said: Well, if this is such a threat, why can't we wait until after the U.S. Supreme Court joins the Massachusetts Supreme Court in saying you cannot limit marriage to opposite-sex couples, based on this rationale and the logical conclusion of the language I have already described?

As you know, the U.S. Constitution has been amended 27 times. We have some history, some track record of how long it takes the process to go forward. It requires, of course, as you know, a two-thirds vote in the Congress. It requires ratification by three-quarters of the States. In other words, it takes a little time. Some amendments have been adopted and ratified in as short as 8 months, but typically they take a little bit longer.

So what people are saying—if they want us to wait until after the Federal courts declare traditional marriage unconstitutional, if they want us to wait until that time to raise this constitutional amendment—they are, I suggest to you, inviting the same sort of chaos we are seeing happening in Massachusetts. Because once same-sex marriages occur, if months and maybe years later the Constitution is amended to reinstate the status quo of traditional marriage, it may very well be too late.

So I will conclude, because I see the distinguished Senator from Alabama in the Chamber, who I know has been waiting to address this issue. This is an important issue. This is an issue that deserves serious debate by serious people. This is an issue that cannot be limited to one State. And this is an issue the American people deserve a right to be heard on through the amendment process.

I would say, in conclusion, there are some who say the U.S. Constitution is a sacred document and should not be amended. If the American people do not exercise their rights under Article V of the Constitution to amend the Constitution as they see fit—given that high bar, and given the deliberation that is required in order to meet that high standard—the only people who are going to amend the Constitution are judges—Federal, life-tenured judges who are accountable to no one.

I submit that is antidemocratic, it is contrary to the concept of self-government that is ensconced in our Constitution and was embraced by our Founding Fathers, and simply will not

stand up under any close scrutiny. The whole concept that Federal judges ought to be the only ones to speak on what the laws are that govern us is antithetical to a constitution that guarantees government of the people, by the people, and for the people.

Finally, I would say we have on this last chart a statement of intent by those who intend to pursue legal action across the country until they reach their ultimate goal:

We will not stop until we have [same-sex] marriage nationwide.

This was stated by a spokesperson for Lambda Legal, which is an organization that supports much of this concerted legal action across the country in State and Federal courts, the logical conclusion of which is the judicial mandate of same-sex marriage.

I look forward to the additional debate and the words offered by my colleagues on this subject. I hope those who have a different view will have the courage to come here and tell the American people why it is they think the preservation of the American family and the preservation of traditional marriage is unimportant. I think we can have a pretty good debate. I hope they do not choose, instead, to stay in their offices or at home and hide from this issue. This is simply too important to the kind of country America is and the kind of country we will become.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, today the Senate has begun the formal debate on the constitutional amendment that does something very simple; that is, protect marriage. The question before us is fundamental: Should marriage remain the union between a husband and a wife? Marriage is the union between a man and a woman for the purpose of procreation, and has been, until this point, one of the great settled questions of human history and culture.

Yet our current legal system seems alarmingly out of step with this historical understanding of marriage. Over and against 5,000 years of recorded human experience and social development, the Massachusetts Supreme Court has thrown out the definition of marriage. Marriage is no longer to be understood as a covenant between a husband and wife in the interest of their future children but, rather, the consummation of romantic attraction between any two adults. And they, these judges, appointed lawyers to these positions, imposed this radical change over the strong objections of the people of Massachusetts, the Legislature of Massachusetts, and the Governor of Massachusetts.

Indeed, a number of local governments in California and Oregon and New York followed the lead of the Massachusetts court, offering marriage licenses in violation of State laws, in violation of State constitutions. Same-sex couples from 46 States applied for marriage licenses in these jurisdictions. There are pending lawsuits to overturn marriage laws in 11 other States. It has become clear that the issue is a national issue, and it requires a national solution, and thus this debate on the floor of the Senate.

Last year's Supreme Court decision in Lawrence v. Texas, combined with the Court's views of the constitutional clauses on full faith and credit, equal protection, and due process, have convinced legal scholars of all political persuasions that the existing Defense of Marriage Act will be struck down. Harvard law school professor Laurence Tribe said:

You'd have to be tone deaf not to get the message from Lawrence that anything that invites people to give same-sex couples less than full respect is constitutionally suspect.

Yale law professor William Eskridge agreed that the Lawrence decision will add to the momentum for recognition of same-sex marriage.

The Harvard Law Review, last month, weighed in with its opinion: ''The time is ripe for a constitutional challenge to DOMA'' because the 1996 act ''violates equal protection principles.''

The truth is, the Constitution is about to be amended. The only question is whether it will be amended by the U.S. Congress, as the representative of the people, or by judicial fiat. Will activist judges amend the Constitution? Will they undo marriage as the union of a man and a woman? Or will the people amend the Constitution to preserve marriage?

I say the people should have a voice. On such a fundamental question, the only sure option is a constitutional amendment.

Some have argued marriage is already a weakened institution in America and expanding marriage to same-sex couples will strengthen it. It is true that marriage in this Nation today is not as strong as it should be. But I question whether changing the definition of marriage will help us strengthen the institution. We can look at what has happened in other countries.

Scholar Stanley Kurtz has found that 10 years of de facto same-sex marriage in Scandinavia has further weakened marriage. A majority of children in Sweden and Norway are today born to unmarried parents.

In the Netherlands, which adopted de facto same-sex marriage in 1997, the proportion of children born outside of marriage has tripled. This isn't surprising. When the laws of a nation teach the next generation that marriage no longer has anything important to do with bringing mothers and fathers together for their children's sake, how can we expect otherwise? Rather than making marriage stronger, it has made marriage optional for childbearing. And we know from social science and from common sense that children do best in stable two-parent households.

Conversely, children in broken and unstable homes suffer. They are more prone to delinquency, more prone to poorer grades, high-risk behaviors, a whole raft of negative social outcomes. Children need moms and dads. Marriage recognizes and addresses that need.

Yes, marriage is about love. But it is also crucially about pointing men and women to the kind of loving union that binds them together and to their children. Far from strengthening the family, separating marriage from childbearing and child rearing undermines the family and distorts what we teach our children about the meaning of adult commitment, responsibility, mutual loyalty.

As Governor Mitt Romney recently testified, the pressures to change have already begun. The Massachusetts Department of Health has begun to insist that even birth certificates must change. The lines for mother and father are being replaced by parent A and parent B. One wonders if parent A and parent B are even expected to be more than casually acquainted. So we can see that the implications of radically redefining marriage are far reaching. They are dramatic. They are not private. They are not measured.

As we proceed to debate this serious and intense issue, I urge all sides to accord one another respect. Let us agree at least on this one point, that the Harvard Law Review is wrong and irresponsible when it says that Americans who want to protect marriage are motivated by animus or bigotry. And Cheryl Jacques of the Human Rights Campaign is wrong when she described marriage amendment proponents as ''hate-filled people who will stop at nothing to achieve their discriminatory, offensive goals.''

Such allegations are neither fair nor true about the vast majority of decent, law-abiding Americans. Nor do they help us understand the issues before us. Americans of all races, creeds, and parties are coming together to protect marriage as the union of husband and wife. We do so with respect for those Americans who disagree. The debate over something as basic and fundamental as marriage may be passionate and intense, but it need not be ugly and divisive. Amending the Constitution is a serious matter. We do not consider this action lightly. It is a serious matter that has to be addressed with the utmost respect, time for debate, consideration, and deliberation. That is what we will see play out on the floor of the Senate over the course of today and Monday and Tuesday.

Too many important decisions have been made by unelected judges. Far from settling issues, such sweeping decisions have only fueled the controversy. The American people have a right to settle this question of what marriage will be in the United States. That can only be done through the mechanism our Founding Fathers gave us for settling questions of great national import. And that is the constitutional process. It is not autocratic but

supremely democratic, consistent with the great principles of federalism. The Constitution can only be amended if two-thirds of both Houses of Congress agree and three-quarters of the States, and it will only happen if the great majority of the American people across this land agree. That is the democratic process.

Marriage is an issue that rightly belongs in the hands of the American people. If the people do not speak, then the courts become our masters by default.

Marriage and family are the bedrock of society. Before we embark on a vast untested social experiment for which children will bear the ultimate consequences, we need a thorough public debate. It is my hope that our debate in this body will add to the larger marriage debate already underway.

Marriage is worth the time, energy, and attention of this Senate and of all the American people. The model of the family bound by marriage to fulfill its attendant responsibilities, indeed, is a worthy ideal.

The matter before us is critical. The debate before us is essential. Let's hold it with civility and respect. Let the debate be spirited, let it be substantive, and let it be held now in this body, the Senate, for this and future generations of Americans.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

PRIORITIES AND ABSENCES

Mr. LAUTENBERG. Mr. President, I wish to talk for a few minutes about a subject different than the one we have been hearing about most of this morning.

I rise as a proud member of the Senate. I treasure every moment that I serve here. I look at my voting record of over 20 years and I am proud of that record. It is important; whatever we do here is important. So I rise today to raise a question about a disturbing television ad that President Bush is running against our colleague, Senator KERRY. The ad opens up with the President saying, ''I approve of this message.''

The President's commercial is called ''priorities.'' It criticizes Senator KERRY for missing votes here. The President's advertisement says that ''leadership means choosing priorities.'' I could not agree more because Senator KERRY has chosen the correct priorities, while President Bush has been absent from leadership—sometimes referred to as AWOL.

If you look at the priorities of these two men throughout their lives, you learn a lot about who was absent and who was a leader. Senator KERRY has never been absent, AWOL, from his responsibilities. The President, on the other hand, has been absent at times when it required leadership. During the Vietnam war, an era in which 58,000 American soldiers lost their lives, and many more than that were wounded, President Bush was AWOL from leadership, AWOL from serving our country. He was assigned to the Texas Air National Guard, but he was absent from mandatory physicals, so he was grounded from flying. He was absent from his duties. We will never know all of the facts about the President's National Guard service because, today, the New York Times revealed that his records have been destroyed ''by mistake.''

If you look at Senator KERRY's history, you see a totally different picture. You see a man who signed up not just to join the Navy, but to go to Vietnam to serve his country. Even though he disagreed with that policy, he served bravely and courageously in a leadership role. He commanded a swift boat and he led it bravely.

Last week, I had the opportunity to visit with Del Sandusky, one of Senator KERRY's crewmen in the Navy. He tells many moving stories about the bravery and leadership of Senator KERRY in Vietnam.

By the time he returned from Vietnam, Senator KERRY earned a Silver Star and a Bronze Star, which are high-standing awards for bravery and courage in serving his country; and three awards of the Purple Heart for his service in combat. In fact, a question has been raised about whether he deserved the third Purple Heart. I don't know what that means. Does it mean we want to measure the depth of the wound to see whether you pass a certain line, and the Purple Heart is one color or another? The military has a process, and they said he is entitled to three Purple Hearts. In my view, he is also entitled to the gratitude of this country for speaking up after he finished his service to talk about what might have gone wrong with the decisions in Vietnam. But he didn't ever relinquish or shirk his duties.

What about the President's service at this time? They won't reveal the specifics. The records were destroyed, as we now know, and we will never find out. In this current war, as our brave soldiers are battling insurgents in Iraq, the President has not been honest about the true cost of this war. I am talking about the human cost as well as in monetary terms.

The President has ordered that no cameras be allowed to film the flag-draped coffins of heroes returning from battle. In my view, that is disrespectful to these men and women who gave their lives for this country.

I went to a funeral at Arlington Cemetery, and I also went to the funeral service of President Reagan. Each funeral had a similarity. They had an honor guard of proud service people escorting the coffin, doing their duty to say this Nation is grateful to these people they considered heroes. One act that the honor guard is required to perform is the folding of the flag and to finally put it into a triangle that can be handed over to the family. I watched at Arlington Cemetery when, crease by crease, each pair of service people—soldiers, marines, sailors—turned their part of the flag over. Finally, they folded it into a triangle, and the head of the honor guard walked over to the mother of this man who died and handed it to her. You could see the pride and the tears in her eyes with her family as she received this tribute from her country for her son's life.

The President has ordered that no cameras be allowed to film the flag-draped coffins of heroes returning from battle. In my view, it is disrespectful. Other Presidents weren't afraid to show the American people images of the honor guard receiving their coffins. In fact, President Reagan stood on the tarmac and publicly and openly received the coffins of 241 marines killed by Iranian-backed terrorists in Beirut in 1983. President Clinton did the same for flag-draped coffins returning from Kosovo. But President Bush hasn't been there. He is AWOL from this solemn duty.

When it comes to domestic issues, the President is AWOL from leadership. He was absent from funding the No Child Left Behind program. He signed it into law with great fanfare. But when the cameras were shut off, his leadership stopped. The latest budget underfunds No Child Left Behind by $9.4 billion. The budget also proposes the elimination of 38 educational programs. That is absence from leadership.

When it comes to protecting the environment, the President is absent. He refuses to make polluters pay for Superfund cleanups. He has proposed an outrageous rule to allow powerplants to spew mercury into the air and water, which brings potential harm to our children and those who are on the way to being born.

In the fight to cure disease, the President is absent. We have great tools to cure diseases such as Alzheimer's and juvenile diabetes at our disposal, and that tool is the use of embryonic stem cells, but the President is refusing to allow such research to proceed for political reasons. That is an absence of leadership.

When it comes to our Nation's transportation needs, the President has been AWOL. He has threatened to veto the highway bill even though it enjoys overwhelming bipartisan support. That puts 1.7 million jobs at risk at a time when we need to create jobs.

Thirty-eight percent of our roads are in fair or poor condition and 28 percent of our bridges are structurally deficient. Traffic congestion costs Americans more than $69 billion annually in lost time and productivity and 5.7 billion gallons of fuel annually is wasted while motorists sit in traffic. This absence of leadership on transportation is harming American families across the country.

The President signed a Medicare drug bill into law and the law has turned into a confusing nightmare for our Nation's senior citizens, who are barely

going to see little, if any, monetary benefit. That is an absence of leadership. Of course, the main benefit does not kick in until 2006, conveniently past the next election. He does not want the American public to really see what is in that Medicare bill.

On homeland security, the President talks tough, but is he really there? The President's budget would reduce funding for grants to local police, fire, and emergency medical personnel from $4.2 billion in 2004 to $3.5 billion in 2005, more than a 15-percent decrease. Would anyone suggest we have less to worry about from terrorists when we just heard the dismal review by the Secretary of Homeland Security? The President's proposal will also cut first responder training by 43 percent.

The lack of leadership is not just at the White House. Unfortunately, my Republican colleagues in the Congress almost always march in lockstep with the White House, even at the peril of their constituents. This blind allegiance to the White House is having devastating effects. We have seen our budget surplus turn into deficits as far as the eye can see.

In Iraq, we bought the White House line and ignored military leaders. Look at the case of GEN Eric Shinseki, who said we need 300,000 troops in Iraq to do the job. He was right, but he was fired for telling the truth. We have recently heard from one of the leading Army generals who said our forces are too thin, and as a result of that, it is fair to say we have seen terrible casualties—879 Americans killed in Iraq, over 5,000 injured. If we had listened to General Shinseki and other military experts rather than the White House, perhaps those numbers would be less.

When the President said to the Congress, do not let Medicare negotiate for drug prices, we should have said: Too bad. Prices are out of control. We see that in the newspapers regularly now. We need to do this. Instead, the Republican majority said, ''yes, sir,'' and followed the White House's orders, and drug prices keep soaring.

I say enough is enough. We are a coequal branch of the Government. Let us act like it. My Republican colleagues should stand up to the President when they think he is wrong.

Senator KERRY is on a noble mission to change the direction of this country for the better. In doing so, he is leading us down a path toward a stronger America, and I can think of no better reason to pursue that goal with every minute of time, with every ounce of effort, with every bit of intellect he can muster. We wish him good health and success, to lift our country out of the misery of worry about their children, their jobs, their parents, and their Nation. We wish Senator KERRY Godspeed and hardly think of him as being AWOL. His record disproves any notion of that.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. COCHRAN). Without objection, it is so ordered.

ACTIVIST COURTS IN AMERICA

Mr. SESSIONS. Mr. President, as we finish up today, I want to share a few thoughts on the problem we have with the activist courts redefining marriage.

Marriage has been defined by every legislature that has ever sat in the United States from every State, now 50 States, the same way, but now we have unelected judges altering and changing that fundamental institution.

It is not a little matter. It is a very big matter. It is a matter the American people have a right to be asked about. It is a matter the American people have a right to be engaged in. It is an institution that no one can dispute is central to American culture. Regarding the culture of any country in the world, the status of family and marriage is critical to that culture.

I had the privilege of chairing a committee that had a hearing on marriage. It was a remarkable thing. Barbara Dafoe Whitehead was one of the witnesses. She had written an article that was voted one of the most significant articles in a news magazine in the second half of the 20th century. The Presiding Officer, the Senator from Mississippi, served with Dan Quayle, the former Vice President and Senator of this body. The name of the article was, ''Dan Quayle Was Right.''

She has since continued to study the science of families. She told us when she originally did her report she was criticized by academics around the country, but in the 10 years since she wrote that article there is no dispute that children do so much better—every objective scientific test shows that—if they are in a traditional two-parent family. Indeed, the husband and wife do better. It is a healthy relationship that the State, the Government—without any doubt, it seems to me—has every right to want to affirm and nurture and encourage through legislation.

To me, there is no discrimination whatsoever in a State deciding they are going to give a special protection to the marriage relationship that produces children, who will eventually run our country when we are gone. Any nation, any country, and any State has an interest in producing children who will take over and lead their country in the future.

They also have an interest in how those children are raised. It is a big deal here. Some people in this body continually push for more State and Federal Government involvement in the raising of children. I will ask you this: If there are not families to raise those children, who will raise them? Who will do that responsibility? It will fall on the State. There will be a much less effective job done, at greater cost to the taxpayers. Who could dispute that? I think the State has a remarkable and deep interest in it.

Likewise, when you have a universal, unequivocal, unbroken, consistent decision by every State and virtually every nation, until the last few years, that a marriage should be between a man and a woman, I think anybody ought to be reluctant to up and change it; to come along and say, well, you know, everybody has been doing this for 2000 years, but we think we ought to try something different.

We should not do that. I mean, if you want to bring it up in the legislature of the State of Alabama or the State of Massachusetts and you want to debate it and have hearings on it and take evidence and then you decide you want to vote on it, maybe that is one thing. But what we have had in this circumstance is a situation in which the Supreme Judicial Court of Massachusetts, citing language from the U.S. Supreme Court, up and declared it violates the equal protection clause of their Constitution to treat same-sex unions differently from heterosexual unions.

Maybe that is an equal protection violation. Maybe we could say that is what the Constitution says. But nobody, since the founding of this country, has ever interpreted it that way. What happens if a court makes a mistake? What happens if a group of judges says: I don't like the way the legislature has been handling this marriage thing. I don't think they have been affirming same-sex couples' unions and they ought to do it. Why don't we rule that way? Why don't we do that?

Somebody says, How are you going to do it? They say, We will study the Constitution. Here, it says everyone should be given equal protection of the laws. So we can overrule the State legislatures and we will say treating those two unions differently violates the equal protection of the laws. We will declare it unconstitutional.

Where did that leave the people of Massachusetts? We are on the verge of it, if the U.S. Supreme Court does it, for the entire United States. Where does that leave the people?

I remember in the early 1980s, Hodding Carter, who used to work for President Jimmy Carter, was on ''Meet the Press'' or one of those shows he was on regularly and they were talking about judicial activism. He said the sad truth is we liberals have gotten to the point where we ask the court to do for us that which we can no longer win at the ballot box.

This cannot be won at the ballot box. It can only be imposed on the people of America through a judicial ruling under the guise of interpreting the Constitution. That is what activism is. It is judges allowing personal political views to infect their decision-making

process, where they override the actions of the legislature.

I am sure some say they will pass a law and overturn the Supreme Court. You cannot do that. It is important for everybody in this body to understand that. If the Supreme Court of the United States declares the Constitution prohibits a differentiation between a traditional marriage and other unions, the Constitutions of Massachusetts, or Illinois, or Alabama, or Mississippi is ineffective. It is trumped by the U.S. Constitution.

If we in the Congress pass a piece of legislation, a DOMA-like piece of legislation—I am sure it has been referred to earlier—it will not be effective in the face of a declaration by the U.S. Supreme Court that it is a violation of the equal protection clause of the U.S. Constitution to treat these unions differently. So it is a big deal for us.

We have one of the great institutions of our entire culture, for which there is virtually unanimous public support, virtually unanimous support among all the legislatures who have ever sat in the States of the United States of America, and it is in danger of being wiped out by the Federal courts.

I know Massachusetts has already so ruled on May 17. Less than 2 months ago they began to conduct same-sex marriages in Massachusetts. They say those unions have to be given the same, equal treatment as the other unions.

I would ask, what about two sisters who live together, care for one another, have been together 40, 50, 60 years? Are they treated as a marital relationship? Why don't we call that a marriage? Two brothers? A brother and sister? A mother and a daughter who live together many years without any kind of sexual activity? Why is this same-sex union given a preferential treatment over those unions?

When you get away from the classical definition of marriage, we get into big trouble about where those lines will stay. The reason a State has an interest in preserving marriage, traditional marriage, is because children are produced in that arrangement. Out of that arrangement a new generation is born, raised, nurtured, trained, and educated. We need to affirm that.

We had an African American who spoke to a group of us yesterday.

He was Secretary of State of Ohio and he talked about that and how deeply people felt about it and how important he thought it was.

Another African American was pastor of a 2,000-member church. He was a bishop. He was also a city councilman in Detroit. He talked about how hard they have worked to overcome the breakdown of marriage in America and strengthen marriage in America.

We ought to be passing laws that encourage marriage, not discourage it. We ought to be, as a policymaking body, involved in establishing policies that affirm that relationship. We know scientifically, we know intuitively, and we know morally that this is the better way.

I am not putting down single parents. I am not condemning people who have a different sexual orientation. I don't mean that in any way whatsoever. But the State, the government, has a right to define marriage in the classical term because that is where children are born, that is where they are nurtured, raised, and cared for. If the parents don't do it, I guess the State has to, which is what is happening in Europe.

Earlier today, one of the Senators may have mentioned a new letter that has come out of the Netherlands. Five scholars—social scientists and lawyers—have written a letter to warn that their actions in the Netherlands to affirm through legislation same-sex unions may well have contributed to the collapse, decline, and very rapid disorder of marriage in the Netherlands. We know that over 50 percent of the children in Norway, which a number of years ago created defacto same-sex marriage, are born out of wedlock. It is an incredible collapse of marriage in northern Europe—Norway, Sweden and Denmark have declined, and the Netherlands has shown a rapid decline. These social scientists warned other nations that are considering going in this direction, that are considering passing laws in this direction, that it would further weaken marriage and family.

We ought to pay heed to that. Why would we want to go down that way? We do not follow the European model of national defense. We have an extraordinary, modern, and effective national defense capability that the Europeans do not have. We do not follow the European model on taxing and spending. That is why our Nation is stronger, more economically dynamic, and is growing far faster than the European nations. They are not growing. Their growth rate is down. Their population is aging. They are having fewer and fewer children. Their welfare rolls are growing. They have a workweek of 35 hours. We are supposed to find more people more jobs so more people can work. And their unemployment is about twice ours.

We don't follow their idea on the economy, thank goodness. The socialist model has not worked there and they are in a pell-mell race to secularize Europe. And we have not done that either. They don't allow a Muslim child to wear a scarf, or Christian child to wear a cross.

Why would we want to go that way? We should not go that way. We do not have to. We can make a choice to go a different way.

Some in this country, and I think some on our courts, seem to believe this is the wave of the future; that this is the enlightened Europe, and we ought to follow the enlightened Europe with a negative growth rate, I guess, and a rapid increase in secular relations in society. I don't think we need to go there.

There is an opportunity and a big moment. This is a big moment. It is an opportunity for this Senate to allow the people of the United States to speak on this issue, to say how they want the future of this country to be handled, for them to say who is in charge of this country. As Senator CORNYN from Texas said earlier, when an unelected judge makes a ruling in a political manner, like on the definition of marriage, it is an anti-democratic act. These are people, unelected, with lifetime appointments, not answerable to the public. If we vote wrong, you can remove us from office. That is the way the system works and the Founding Fathers all thought about it. That is what democracy is. But we have unelected people not having hearings, not having debate, not going out and having town hall meetings throughout their State, as I do and most Senators do, listening to the people, thinking about the issues, having a sensitivity of what is occurring in society. They are sitting up there in their robes rendering rulings to go to the heart of who we are as a people. I am concerned about it. I think we have every right to be concerned.

The substance of the matter is large. It is a very big deal. The dynamics of it are very crucial.

It is time for us as a people to utilize the power of the Constitution given us through our elected representatives to amend the Constitution. That is what it provides.

Frankly, when a judge redefines the Constitution's traditional meaning and makes it say something it does not, that judge has amended the Constitution contrary to the provisions in that document.

I remember back when I was U.S. attorney in Alabama. I had a parent come to me and show me the textbook in the classroom. It said how the Constitution is amended. The one way was the amendment process, as provided for in the Constitution. And they mentioned another way: Amended by ruling of the court. They are teaching children—the truth—which is courts, through their rulings, if they are not true and faithful to the document itself, amend the Constitution.

We ought not to allow that to occur.

I think this would be in no way extreme, in no way improper, and highly appropriate for this Senate to say let's let the American people decide about this fundamental institution of marriage, and let us tell the courts that we control life in this country, not them. They are not accountable.

Some say, well, this is all not going to happen; that you are not going to have the courts do this. It is not just not going to happen. It is not thinkable. Was it thinkable that the 9th Circuit Court of Appeals in this country, the largest court of appeals in the United States, would rule that ''under God'' could not be in the Pledge of Allegiance? When it got to the Supreme Court of the United States, do you see

what happened? They punted. They moved it out on procedural grounds and did not state clearly what their view of it is. A number of their rulings, frankly, would indicate that it is not appropriate.

The Supreme Court has a problem in a lot of issues. They are not perfect. People are not without flaw. Many of these decisions are made by just a slim majority. It is not nine votes that are needed out of nine; it is only five, a majority. Five judges can redefine marriage and do a lot of other definitions that can impact significantly this country if they don't show personal discipline and fidelity to the law.

Let me just say this: This is the whole basis of a debate in this body between our Members on the other side of the aisle and on this side of the aisle and President Bush over judges. It is over whether or not judges will show restraint, whether they will remain true to the document, and not use the opportunity to rule as an opportunity to impose their personal views on the American public. That is what this debate is about over judges. It is not Republicans this, and Democrats that, how many judges I confirmed here and how many judges you confirmed there. It is a deep, fundamental difference.

The liberal activist groups in this country cannot win at the ballot box. So they are determined to utilize court rulings like this to further their agendas that are contrary to the American people.

I make one point before I wrap up. We have the language from the U.S. Supreme Court, our Supreme Court. In Lawrence v. Texas, Justice Kennedy, writing for a six-person majority, says:

> In Planned Parenthood of Southeastern Pennsylvania v. Casey, the court reaffirmed the substantive force of the liberty protected by the Due Process Clause.

When the Presiding Officer was in law school and was taught law, I am not sure he was told there was a substantive due process right to liberty. I don't think substantive due process is mentioned in the Constitution, but here we have ''liberty protected by the Due Process Clause. The Casey decision again confirmed that our laws and tradition afford constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education . . . ''

This case has to do with whether a State could prohibit sodomy, and they ruled they could not. It says in the case, Casey confirmed that our laws and our tradition afford constitutional protection. So we are defining the Constitution, this says. The Constitution says you have a right to ''protection to personal decisions relating to marriage, procreation, contraception,'' and more.

Then further it says:

> Persons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do.

Obviously referring back to marriage above.

That is a pretty good indication that the Supreme Court—in dicta, not a holding of the case but in language and logic—made a clear suggestion they were prepared to rule that heterosexual marriage could not exist without homosexual marriage.

Let's hear how one of the brilliant Justices of the Court, Justice Scalia, who believes the Court should show restraint, analyzed the impact of it. Justice Scalia said it does mean we must recognize same-sex marriages.

Justice Kennedy says in the decision, ''The present case . . . does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter.'' But, the logic and language I read earlier indicated that.

Justice Scalia, who dissented from the case, said in his dissent, ''This case 'does not involve' the issue of homosexual marriage only if one entertains the belief that principle and logic have nothing to do with the decisions of this court.''

Justice Scalia is correct. If you read the logic of that Court decision, the language they used—dicta that it was—would indicate that is where they are heading, and six judges signed off on that language. It only takes five.

When a case comes up of this kind, we can say with certainty there is a likelihood, and many scholars believe a very high likelihood, that the Court would rule that traditional marriage is too restrictive, it has to be changed from the way the people have defined it. We do not have to accept that. We have every right to amend the Constitution. The laws in the Constitution provided for slavery—that was changed. The laws of the Constitution provide for free speech. It applies to every State. The right to keep and bear arms. All kinds of guarantees are in our Constitution. The American people can define what marriage is.

This amendment is narrowly drawn. It does not in any way threaten liberties. It does not take our money, it will not put us in jail, it will not do all these horrible things that sometimes you have to deal with in the law if you are not careful and the Constitution might get away from you. It is a narrowly drawn matter dealing with one issue, and that is marriage. We have every right to do that.

I am disappointed that some of the people I know, particularly on the other side of the aisle, are not going to vote for this constitutional amendment, and they are not even here to talk about the amendment. They don't want to talk about it. They say it is somehow wrong to discuss it during a time when we are leading up to an election. What is wrong with that? What is wrong with having a vote?

The reason it is coming up now is because a month and a half ago is when the marriages first started being conducted in Massachusetts, November was when the first ruling came out of there, and last year was Lawrence v. Texas.

This has been building. Law reviews by liberal law professors are pushing this issue all over the country. Lawsuits are being filed throughout the country.

The pressure is on to destroy the traditional definition of marriage. It is time and perfectly appropriate for us to deal with it. I hope we will. The American people need to be watching this vote, watching the issues that are debated. They need to ask themselves how much confidence they have in their representatives if they do not share their views on this important issue.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ALLARD). Without objection, it is so ordered.

NONGERMANE AND NONRELEVANT AMENDMENTS UNDER CLOTURE

Mr. REID. Mr. President, yesterday the chairman of the Judiciary Committee, my friend, the distinguished Senator from Utah, Mr. HATCH, just prior to the cloture vote on the class action bill, made a statement that I want to talk about briefly today.

He said Members can bring up nongermane or nonrelevant amendments after cloture is invoked. I am reading from page S7818 of the CONGRESSIONAL RECORD where he said:

> Keep in mind that if we invoke cloture, that doesn't mean those who want to bring up extraneous, nongermane amendments or nonrelevant amendments can't do it. They can bring them up after cloture, but they are going to have to get a supermajority vote to win. That doesn't foreclose them.

That simply is not valid.

If cloture is invoked, you can bring up a nongermane amendment, but if anyone raises a point of order that your amendment is not germane, that amendment falls automatically. There is no such supermajority motion available like there is under the Budget Act. The amendment fails without a vote—fails or falls without a vote, however you want to term it. The only way you can get a vote is if you choose to appeal the Chair's ruling that your amendment is not germane. If you are successful, you will set a precedent that will permanently throw out the germaneness rule under cloture, and such an appeal of the Chair's ruling is a majority vote, not a supermajority vote.

So the fact remains: Nongermane and nonrelevant amendments are not in order once cloture is invoked, and there is no such supermajority motion available to make them in order.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I want to add to the statement I completed. In the situation Senator HATCH talked about and I commented on, you could the day before file a special motion and ask that the rules be set aside and that would take a two-thirds vote. So I guess that could be the supermajority he was talking about. It would be extremely difficult to do. You would have to file a notice the day before. I don't think that would likely happen. But I wanted to make sure the record was clear that I did not miss anything.

BURMA

Mr. McCONNELL. Mr. President, I want to commend the President for renewing import sanctions against the repressive military junta in Burma. The quick action of both Congress and the President on this matter underscores America's commitment to freedom and justice in that country.

Unfortunately, there have been no significant developments inside Burma since I last spoke on this issue several weeks ago. In 2006, Burma is expected to assume chairmanship of the Association of Southeast Asian Nations, ASEAN; there could be no greater loss of face to ASEAN or the region.

I am pleased that some of our allies in the European Union, E.U. have taken a principled stand over Burma's participation in the upcoming Asia-Europe Meeting, ADEM. However, the United Nations must do more to restore democracy to the Burmese people.

We need a full court press on the junta, which must entail the downgrading of diplomatic relations with the illegitimate State Peace and Development Council, SPDC, by placing its senior representative in Washington on the next flight to Southeast Asia. We do not have a U.S. Ambassador in Rangoon; the junta should not have one here.

I ran into the SPDC's ''ambassador'' in Washington at a July 4th celebration at the State Department, and told Mr. Linn Myaing to free Burmese democracy leader DAW Aung San Suu Kyi.

I find it incredible that someone from such an odious regime would be invited to celebrate the independence of the freest country in the world. Someone is clearly asleep at the wheel over in Foggy Bottom.

HONORING OUR ARMED FORCES

HONORING STAFF SGT. STEPHEN G. MARTIN

Mr. BAYH. Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave young man from Warsaw, IN. Staff Sgt. Stephen G. Martin, 39 years old, died in the Walter Reed Army Medical Center in Washington, DC, after sustaining serious injuries at the hands of a suicide bomber, just outside a U.S. military compound in Mosul, Iraq. Stephen sacrificed his own life to save the lives of hundreds of fellow soldiers by causing the suicide bomber to ignite the bomb before entering the compound. One other soldier also lost his life in this selfless and heroic action.

Stephen spent his early childhood and junior high years in Columbia City, IN. He then moved to Pennsylvania and graduated from East Pennsboro High School in 1983. Stephen later joined the Army's 101st Airborne Division and worked to become a member of the Trenton, NJ Police Department, until he moved to Rhinelander, WI where he was a sergeant in the department. Just last year, Stephen joined the Army Reserve 330th Military Police Detachment. He was deployed to Iraq to help train local police forces. Stephen's sister, Susan Fenker, told the Fort Wayne Journal Gazette that Stephen told his family ''he was proud to help Iraqis build a free society and give hope to the next generation.'' With his entire life before him, Stephen chose to risk everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

Stephen was the twenty-ninth Hoosier soldier to be killed while serving his country in Operation Iraqi Freedom. This brave young soldier leaves behind his father, Jim; his mother, Carolyn; his wife, Kathy; his two daughters, Jessica and Brianna; his son, Seth; and stepdaughters Jackie, Jessica and Kaitlyn. May Stephen's children grow up knowing that their father gave his life so that young Iraqis will some day know the freedom they enjoy.

Today, I join Stephen's family, his friends and all Americans in mourning his death. While we struggle to bear our sorrow over his death, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is his courage and strength of character that people will remember when they think of Stephen, a memory that will burn brightly during these continuing days of conflict and grief.

Stephen was known for his dedicated spirit and his love of country. When looking back on the life of his late friend and co-worker, Rhinelander Police Chief Glenn Parmeter told the Fort Wayne Journal Gazette, ''He was always a soldier striving to bring about a better life for everyone, whether as a Rhinelander police officer or a military policeman in Iraq.'' Today and always, Stephen will be remembered by family members, friends and fellow Hoosiers as a true American hero and we honor the sacrifice he made while dutifully serving his country.

As I search for words to do justice in honoring Stephen's sacrifice, I am reminded of President Lincoln's remarks as he addressed the families of the fallen soldiers in Gettysburg: ''We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.'' This statement is just as true today as it was nearly 150 years ago, as I am certain that the impact of Stephen's actions will live on far longer than any record of these words.

It is my sad duty to enter the name of Stephen G. Martin in the official record of the United States Senate for his service to this country and for his profound commitment to freedom, democracy and peace. When I think about this just cause in which we are engaged, and the unfortunate pain that comes with the loss of our heroes, I hope that families like Stephen's can find comfort in the words of the prophet Isaiah who said, ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Stephen.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On October 14, 1992, Robert K. Woelfel, a transgendered individual, was shot twice by a shotgun blast. Harold Maas, the assailant, claimed to have been assaulted by an unidentified transgendered individual the year before and allegedly shot Woelfel in retribution for that crime.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

POLITICAL EXPEDIENCY

Mr. LEAHY. Mr. President, I am struck by the way the Republican majority is managing the Senate. I have noted that we do not yet have a Federal budget resolution. It is July and we have as yet considered only one appropriations bill, and that one bill still has to be resolved with the House. We have yet even to consider the other 12 appropriations bills that are normally regarded as ''must pass'' legislation—that is unless Republicans intend to shut the Government down, again.

Instead, the Republican majority has apparently decided to devote the July work period to partisan political matters. We are reading press accounts about Republicans maneuvering to bring the divisive constitutional amendment to federalize marriage to this floor for debate. The Senate Judiciary Committee has held a few hearings on this issue but has yet to consider language of a proposed constitutional amendment. Bypassing the committee of jurisdiction to bring this or any constitutional amendment to the Senate floor is an unmistakable sign that political expediency and haste, in the furtherance of political expediency, are the guiding principles for the Republican majority in scheduling the Senate's time. Political expediency—whatever it takes—is their guidepost, not the pressing needs of the country to act on a budget or on the annual appropriations bills. Paramount to Republican leaders at the moment are such matters as the divisive, hot-button topic of federalizing marriage law, by constitutional amendment. Republican partisans seem intent on politicizing not only judicial nominations but also the Constitution itself during this election cycle.

Democrats fulfilled our commitment to the White House when we considered the 25th judicial nomination that was part of our arrangement this year. I read that Republicans will now insist on devoting a good portion of the Senate's remaining time to the most divisive and contentious of the President's judicial nominees. They are intent on following the advice of the Washington Times editorial page to, they believe, make Democrats look bad, when in fact it is the President who is seeking to make judicial confirmations a partisan political issue. Democrats have cooperated in confirming almost 200 judges already. That is more than the total confirmed in President Clinton's last term, the President's father's presidency or in President Reagan's first term. Federal judicial vacancies have been reduced to their lowest level in decades.

It is wrong and it is corrosive to seek partisan advantage at the expense of the independent Federal judiciary or our national charter, the Constitution. I wonder in Presidential election years whether we should not have a corollary to the ''Thurmond Rule'' on judicial nominations that we could call the ''Durbin Rule.'' The astute Senator from Illinois recently observed that we should prohibit consideration of constitutional amendments within 6 months of a Presidential election. He is right in pointing out that the Constitution is too important to be made a bulletin board for campaign sloganeering. We should find a way to restrain the impulse of some to politicize the Constitution.

This week the Republican leadership has stalled action for days on any legislation as it resists amendments to the class action legislation from both Democratic and Republican Senators. The Republican leadership's handling of this bill is a prescription for nonaction, not for legislative movement forward.

Just yesterday Roll Call published an insightful editorial lamenting what it called the ''Big Mess Ahead.'' I think we may already be stuck in that big mess. The editorial noted that ''July should be appropriations month in the Senate.'' I agree. This traditionally has been when we were focused on getting our work done and making sure the funding for the various functions of the Federal Government were appropriated by the Congress, in fulfilling Congress's responsibilities and its power of the purse. Not this year.

Roll Call observes that ''the second session of the 108th Congress is poised to accomplish nothing.'' The way things are going, under Republican leadership, this session will make the ''do-nothing'' Congress against which President Harry Truman ran seem like a legislative juggernaut by comparison.

I ask unanimous consent that the July 7, 2004, Roll Call editorial be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Roll Call, July 7, 2004]

BIG MESS AHEAD

Here we go again. The Senate can't pass a budget resolution. Only one of the 13 appropriations bills has cleared both the House and Senate, July is a short legislative month, and everyone will be gone in August. You know what this means: a lame-duck session in November and a messy, pork-riddled omnibus spending bill.

And it's not just on the money front that the second session of the 108th Congress is poised to accomplish nothing. The House and Senate can't agree on an energy bill despite high gasoline prices, last year's Northeast blackout, repeated urging from the White House and constant reminders of America's over-dependence on risky Mideast oil. Bankruptcy-reform legislation is stymied. So is welfare-reform reauthorization. Maybe there will be a Transportation reauthorization bill, maybe not. Even the Defense reauthorization bill faces a tough conference.

Sure, the House and Senate have done a few must-do things. The United States is in a war, so both chambers have passed a Defense appropriations bill. And both have approved legislation repealing a $5 billion-a-year export subsidy after the World Trade Organization ruled against it and authorized imposition of punitive tariffs against U.S. products. Despite complaints from both parties about expanding budget deficits, however, the House's repeal measure contained $15 billion in new corporate tax breaks; the Senate added $17 billion.

As any House Member will tell you, the perennial locus of delay in Congress is ''The Other Body.'' And so it is this year. The House has passed four appropriations bills, and three more have cleared committee. In the Senate, it's one and one. July should be appropriations month in the Senate, but instead Majority Leader Bill Frist (R-Tenn.) has scheduled class-action tort reform—which had the 60 votes necessary for passage last November—and an anti-gay-marriage constitutional amendment designed mainly to embarrass Democrats before their national convention.

Republicans blame Democrats for Senate ''obstructionism,'' but the failure to pass a budget resolution—which would have made it easier to pass appropriations bills—is mainly an intra-GOP affair. Moderates want to impose a pay-as-you-go system to restrain spending. Conservatives, ironically enough, don't. The situation has the conservative Senate leadership so exercised that it's trying to acquire the means to threaten wayward moderates with the loss of committee chairmanships.

It's true that if Senate Republicans drop the seniority system and give leaders the power to make committee assignments and choose chairmen, they simply will be following the authoritarian patter of Senate Democrats and of both parties in the House. Still, the effect would be to smother centrism—what there is left of it—and enhance partisanship and polarization. That's a distinct Congressional pattern: When things are going badly, make them worse.

INTERROGATION AND TREATMENT OF FOREIGN PRISONERS

Mr. LEAHY. Mr. President, a number of us remain concerned about the abuse of foreign prisoners, and about the guidance provided by the President's lawyers with regard to torture. Much has happened since June 17, 2004, when the Judiciary Committee defeated, on a party-line vote, a subpoena resolution for documents relating to the interrogation and treatment of detainees and June 23, when the Senate defeated an amendment to the Defense Authorization bill on a party-line vote that would have called upon the Attorney General to produce relevant documents to the Senate Judiciary Committee. Because of continued stonewalling by the administration, we remain largely in the dark.

Several Republican Senators have indicated that we should give the administration more time to respond to inquiries, although some of us had been asking for information for more than a year. The Republican administration continues its refusal to provide the documents that have been requested and refused even to provide an index of the documents being withheld.

The Department of Justice admitted in the July 1 letter that it had ''given specific advice concerning specific interrogation practices,'' but would not disclose such advice to members of this committee, who are duly elected representatives of the people of the United States, as well as members of the committee of oversight for the Department of Justice. USA Today reported on June 28, 2004, that the Justice Department issued a memo in August 2002 that ''specifically authorized the CIA to use 'waterboarding,'' an interrogation technique that is designed to make a prisoner believe he is suffocating. This memo is reportedly classified and has not been released. According to USA Today: ''Initially, the Office of Legal Counsel was assigned the task of approving specific interrogation techniques, but high-ranking Justice Department officials intercepted the CIA request, and the matter was

handled by top officials in the deputy attorney general's office and Justice's criminal division.''

So while former administration officials grant press interviews and write opinion articles denying wrongdoing; while the White House and Justice Department hold closed briefings for the media to disavow the reasoning of this previously relied upon memoranda and to characterize what happened; Senators of the United States are denied basic information and access to the facts. The significance of such unilateralism and arrogance shown to the Congress and to its oversight committees cannot continue.

I have long said that somewhere in the upper reaches of this administration a process was set in motion that rolled forward until it produced this scandal. To put this scandal behind us, first we need to understand what happened. We cannot get to the bottom of this until there is a clear picture of what happened at the top. It is the responsibility of the Senate, including the Judiciary Committee, to investigate the facts, from genesis to final approval to implementation and abuse. The documents must be subject to public scrutiny, and we will continue to demand their release.

There is ample evidence that American officials, both military and CIA, have used extremely harsh interrogation techniques overseas, and that many prisoners have died in our custody. Administration officials admit that 37 foreign prisoners have died in captivity, and several of these cases are under investigation, some as homicides. On June 17, David Passaro, a CIA contractor, was indicted for assault for beating an Afghan detainee with a large flashlight. The prisoner, who had surrendered at the gates of a U.S. military base in Afghanistan, died in custody on June 21, 2003, just days before I received a letter from the Bush administration saying that our Government was in full compliance with the Torture Convention.

Some individuals who committed abusive acts are being punished, as they must be. But what of those who gave the orders, set the tone or looked the other way? What of the White House and Pentagon lawyers who tried to justify the use of torture in their legal arguments? The White House has now disavowed the analysis contained in the August 1, 2002, memo signed by Jay Bybee, then head of the Office of Legal Counsel. That memo, which was sent to the White House Counsel, argued that for acts to rise to the level of torture, they must go on for months or even years, or be so severe as to generate the type of pain that would result from organ failure or even death. The White House and DOJ now call that memo ''irrelevant'' and ''unnecessary'' and say that DOJ will spend weeks rewriting its analysis.

As we all know, on June 22, 2004, the White House released a few hundreds of pages of documents—a self-serving and highly selective subset of materials. The documents that were released raised more questions than they answered. Now, more than two weeks later, none of those issues have been resolved.

For example, the White House released a January 2002 memo signed by President Bush calling for the humane treatment of detainees. Did the President sign any orders or directives after January 2002? Did he sign any with regard to prisoners in Iraq?

Why did Secretary Rumsfeld issue and later rescind tough interrogation techniques? And how did these interrogation techniques come to be used in Iraq, where the administration maintains that it has followed the Geneva Conventions?

Where is the remaining 95 percent of material requested by members of the Senate Judiciary Committee? Why is the White House withholding relevant documents dated after April 2003?

I was gratified that the Senate on June 23 passed an amendment that I offered to the Defense authorization bill that will clarify U.S. policy with regard to the treatment of prisoners and increase transparency. But the stonewalling continues: The Pentagon opposes this amendment. I am hopeful that we will prevail in keeping this provision in the bill. Five Republican Senators supported the amendment against an attempt to table it. I thank each of them. I also want to commend the Senate for adopting, also as part of the Defense authorization bill, the Durbin amendment against torture, and I want to acknowledge an important step taken in the House on the same day. The House Appropriations Committee added language to the 2005 Justice Department spending bill that would prohibit any department official or contractor from providing legal advice that could support or justify use of torture.

As it completed its term, the Supreme Court issued its decisions in highly significant cases involving the legal status of so-called enemy combatants. The Court reaffirmed the judiciary's role as a check and a balance, as the Constitution intends, on power grabs by the executive branch. The Court ruled that the Bush administration's assertion that the President can hold suspects incommunicado, indefinitely and without charge, is as arrogant as are its legal arguments that the President can authorize torture. No President is above the law or the Constitution. The Court properly rejected the administration's plea to 'just trust us' and repudiated its assertion of unchecked power.

This Senate and in particular the Judiciary Committee continues to fall short in its oversight responsibilities. President Bush has said he wants the whole truth, but he and his administration instead have circled the wagons to forestall adequate oversight. The President must order all relevant agencies to release the memos from which these policies were devised. There needs to be a thorough, independent investigation of the actions of those involved, from the people who committed abuses, to the officials who set these policies in motion. Only when these actions are taken will we begin to heal the damage that has been done.

We need to get to the bottom of this scandal if we are to play our proper role in improving security for all Americans, both here at home and around the world.

THREAT TO ONLINE PRIVACY

Mr. LEAHY. Mr. President, I want to address a recent court decision that has exposed America's e-mails to snooping and invasive practices. The 2-to-1 decision by the First Circuit Court of Appeals in a case called United States v. Councilman has dealt a serious blow to online privacy. The majority—both, Republican-appointed judges—effectively concluded that it was permissible for an Internet Service Provider to comb through its customers' emails for corporate gain. If allowed to stand, this decision threatens to eviscerate Congress's careful efforts to ensure that privacy is protected in the modern information age.

The indictment in Councilman charged the defendant ISP with violating the Federal Wiretap Act by systematically intercepting, copying, and then reading its customers' incoming emails to learn about its competitors and gain a commercial advantage. This is precisely the type of behavior that Congress wanted to prohibit when it updated the Wiretap Act in 1986, as part of the Electronic Communications Privacy Act (ECPA), to prohibit unauthorized interceptions of electronic communications. Congress's goal was to ensure that Americans enjoyed the same amount of privacy in their online communications as they did in the offline world. Just as eavesdroppers were not allowed to tap phones or plant ''bugs'' in order to listen in on our private conversations, we wanted to ensure that unauthorized eyes were not peering indiscriminately into our electronic communications.

ECPA was a careful, bipartisan and long-planned effort to protect electronic communications in two forms—from real-time monitoring or interception as they were being delivered, and from searches when they were stored in record systems. We recognized these as different functions and set rules for each based on the relevant privacy expectations and threats to privacy implicated by the different forms of surveillance.

The Councilman decision turned this distinction on its head. Functionally, the ISP in this case was intercepting emails as they were being delivered, yet the majority ruled that the relevant rules were those pertaining to stored communications, which do not apply to ISPs. The majority rejected the Government's argument that an

intercept occurs—and the Wiretap Act applies—when an email is acquired contemporaneously with its transmission, regardless of whether the transmission may have been in electronic storage for milliseconds at the time of the acquisition. As the dissenting judge found, the Government's interpretation of the Wiretap Act is consistent with Congressional intent and with the realities of electronic communication systems. I agree, and urge the Justice Department to continue to press this position in the courts. The Department has been a powerful proponent of privacy rights in this case, and I commend its efforts.

I also will be taking a close look at possible changes to the law to ensure that there is no room to skirt the wiretap provisions and engage in the type of privacy violation at issue in the Councilman case. We have an obligation to ensure that our laws keep up with technology, and it may be that advances in communications warrant change. It is imperative that we continue to safeguard privacy adequately in our modern information age.

In a world where Americans are already inundated with targeted mass marketing and mailings, the Councilman decision opens the door to even more invasive activity. With this kind of precedent, ISPs need not offer free services in exchange for reduced online privacy. They could simply snoop in secret, and their unsuspecting customers would never know.

The Councilman decision also opens the door to Government over-reaching. For practical reasons, surveillance devices are often installed at the point of millisecond-long temporary storage prior to an e-mail's arrival at its final destination. To date, law enforcement agencies have treated this as what it is—an interception—and have sought appropriate wiretap approval. But this decision allows law enforcement agents to potentially skip the rigors of the wiretap laws, and perhaps could unleash unrestrained use of search programs like Carnivore. This outcome belies the realities of electronic communications in today's society, undercuts Congress' intent, and is inconsistent with the current approach to such communications in law enforcement practice.

The Councilman decision creates an instant and enormous gap in privacy protection for email communications, and we need to address it swiftly and responsibly. I urge my colleagues to make this a top priority as we finish up the session. I ask unanimous consent to have printed in the RECORD four recent editorials and articles on this issue.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, July 2, 2004]

DERAIL E-MAIL SNOOPING

Imagine that your friendly local mail carrier, before delivering a letter for you, decides to steam it open and read its contents. An outrageous and illegal infringement on your privacy, obviously. But a Federal appeals court in Boston has just permitted an Internet service provider to engage in exactly this kind of snooping when the message is sent in cyberspace rather than by snail mail. This ruling is an unnecessarily cramped parsing of a law that Congress meant to guard, not eviscerate, the privacy of communications. The Justice Department, whose prosecution of the ISP executive was thrown out by the appeals court, should seek a review of the ruling. If that doesn't work—if the Federal wiretapping law has been outpaced by the technology it was supposed to regulate—Congress should quickly step in to fix the glitch.

The wiretapping law makes it a crime to intentionally intercept ''any wire, oral, or electronic communication.'' This language dates to 1986, when e-mail was at an embryonic stage but Congress, in an effort to account for and anticipate that and other technological changes, enacted the Electronic Communications Privacy Act.

The appeals court, however, ruled that opening and reading e-mails isn't covered by the wiretapping law because the messages weren't actually intercepted, as the law defines that term, but were, rather, in ''electronic storage'' and therefore covered by another, looser law. That finding stems from the peculiar nature of e-mail transmission, in which messages are briefly stored as they're transmitted from computer to computer. As the court itself acknowledged, that would leave little privacy for e-mail: ''It may well be that the protections of the Wiretap Act have been eviscerated as technology advances.''

In practcal terms, the implications of the ruling are perhaps more troubling for the restraints it lifts on law enforcement than for the theoretical leeway it gives service providers to copy and read e-mails. The facts of the case were unusual: A small online company that sold out-of-print books and also provided free e-mail service wanted to peek at Amazon.com's sales strategy and copied all of Amazon's messages to the smaller company's customers. Mainstream ISPs have policies that eschew such spying, and the customer backlash that would ensure if they engaged in similar practices would probably deter them from doing so. But the ruling highlights the need for stringent privacy policies in which customers give clear—and informed—consent.

Of more concern, the case could make it far easier for law enforcement agents to engage in real-time monitoring of e-mail and similar traffic, like instant messaging, without complying with the strict rules applied to wiretaps. Under this reading of the law, agents would still need to show probable cause to obtain search warrants from a judge. But they wouldn't have to hew to the more exacting requirements of the wiretap law.

E-mail has become too ubiquitous, too central a facet of modern life, for this ruling to stand.

[From the New York Times, July 2, 2004]

INTERCEPTING E-MAIL

When you click on ''send'' to deliver that e-mail note to your lover, mother or boss, you realize that you are not communicating directly with that person. As you well know, you have stored the e-mail on the computer of your Internet service provider, which, as you also know, may read, copy and use the note for its own purposes before sending it on.

What, you didn't know all this? Sounds ludicrous? We would have thought so, too, but a Federal appeals court recently ruled that companies providing e-mail services could read clients' e-mail notes and use them as they wish. Part of its rationale was that none of this would shock you because you have never expected much online privacy.

Count us among the shocked. The decision, on a 2-to-1 vote by a panel of the United States Court of Appeals for the First Circuit in Massachusetts, sets up a frightening precedent, one that must be reversed by the courts, if not the Congress. It's true that people are aware of some limits on online privacy, particularly in the workplace. But the notion that a company like America Online, essentially a common carrier, has the right to read private e-mail is ludicrous.

All major I.S.P.s, including AOL, say they have no interest in doing that and have privacy policies against it. The case before the First Circuit involved a small online bookseller, no longer in business, that also provided e-mail service. To learn about the competition, the company copied and reviewed all e-mail sent from Amazon.com to its e-mail users. One of its executives was indicted on an illegal-wiretapping charge.

Both the trial and appeals courts ruled that the Federal wiretap law, which makes it a crime to intercept any ''wire, oral or electronic communication,'' did not apply because there had been no actual interception. Technically speaking, the judges held, the bookseller had simply copied e-mail notes stored on its servers, and different laws apply to the protection of stored communications.

These laws were drafted before e-mail emerged as a form of mass communication, so there is some ambiguity in how to apply them. But as the dissenting judge on the appellate panel noted, his two colleagues interpreted the wiretap statute far too narrowly. What's more, their analysis was predicated on the bizarre notion that our e-mail notes are not in transit once we send them, but in storage with an intermediary. The same logic would suggest that the postal service can read your letters while they are in ''storage.''

Americans' right to privacy will be seriously eroded if e-mail is not protected by wiretap laws. The implications of this erosion extend beyond the commercial realm. The government will also find it easier to read your e-mail if it does not have to get a wiretap order to do so. Congress ought to update the law to make it clear that e-mail is entitled to the same protection as a phone call.

COURT CREATES SNOOPERS' HEAVEN

(By Kim Zetter)

It was a little court case, but its impact on e-mail users could be huge.

Last week a Federal appeals court in Massachusetts ruled that an e-mail provider did not break the law when he copied and read e-mail messages sent to customers through his server.

Upholding a lower-court decision that the provider did not violate the Wiretap Act, the 1st U.S. Circuit Court of Appeals set a precedent for e-mail service providers to legally read e-mail that passes through a network.

The court ruled (PDF) that because the provider copied and read the mail after it was in the company's computer system, the provider did not intercept the mail in transit and, therefore, did not violate the Wiretap Act.

It's a decision that could have far-reaching effects on the privacy of digital communications, including stored voicemail messages.

In 1998, Bradford C. Councilman was the vice president of Interloc, a company selling rare and out-of-print books that offered book-dealer customers e-mail accounts

through its Web site. Unknown to those customers, Councilman had engineers write and install code on the company network that would copy any e-mail sent to customers from Amazon.com, a competitor in the rare-books field.

Although Councilman did not prevent customers from receiving their e-mail, he read thousands of copied messages to discover what books customers were seeking and gain a commercial advantage over Amazon. Interloc was later bought by Alibris, which was unaware that Councilman had installed the code on the system.

Councilman wasn't caught because customers complained about his actions; a tip about another, unrelated issue led authorities to discover what he had done.

But just what had Councilman done that was so bad?

Everyone knows that e-mail is an insecure form of communication. Like a postcard, unencrypted correspondence sent over the Internet is open to snooping by anyone.

Additionally, companies have the right to read their employees' e-mail, since the companies own the computer systems through which the correspondence passes, and employees send the mail on company time. And ISPs scan e-mail for viruses and spam all the time, before delivering the mail to the provider's customers.

But there is an expectation that service providers will access communications only with permission from customers, or when they need to do so to maintain their network. In fact, the Wiretap Act states that a provider shall not ''intercept, disclose, or use'' communication passing through its network ''except for mechanical or service quality control checks.''

In April, Google launched an e-mail program called Gmail that gives customers 1 GB of e-mail storage in exchange for letting Google's computers scan the content of incoming e-mails to seed them with related text ads. Gmail customers agree to let a computer read their e-mail.

In contrast, Councilman personally read customers' messages to undermine his competitors' business. He did no without customers' permission and with the knowledge that if his customers found out, his company would likely lose their business.

And yet the court found him innocent of violating the specific law under which authorities charged him.

The court ruled that because the mail was already on Councilman's computer network when he accessed it, he didn't intercept it in transit and therefore was not guilty under the Wiretap Act. The court said the mail was in storage at that point and, therefore, was governed under the Stored Communications Act.

In a similar case in 1991, the U.S. Secret Service seized three computers belonging to a company called Steve Jackson Games. The company, in addition to producing fantasy books and games, hosted an online bulletin board for gamers to communicate with one another. An employee of the company was under suspicion for activities conducted outside work, but the Secret Service confiscated his employer's computers as well. The Secret Service accessed, read and deleted 162 e-mail messages that were stored on the computers used for the bulletin board.

In a suit filed by the game company against the Secret Service, a federal district court found that while the Secret Service agents did not intercept the e-mail, and thus violate the Wiretap Act, they did violate the Stored Communications Act.

Pete Kennedy, the lawyer from the Texas-based firm that litigated the case, called the decision ''a solid first step toward recognizing that computer communications should be as well-protected as telephone communications.''

The Stored Communications Act, along with the Wiretap Act, is part of the Electronic Communications Privacy Act, which protects electronic, oral and wire communications.

But because Councilman was charged under the Wiretap Act and not the Stored Communications Act, the court had to rule in his favor. But even if prosecutors had wanted to charge him under the Stored Communications Act, they could not have done so, since service providers are exempted under the Act.

What this means is that before the Councilman case, ISPs that read their customers' mail without permission could only have been prosecuted under the Wiretap Act. But now the Councilman case eliminates that possibility as well.

The problem with interpreting e-mail on an ISP's server as stored communication is that it opens the possibility for e-mail even outside the ISP to be viewed as stored e-mail.

At many points during its path from sender to recipient, e-mail passes through a number of computer systems and routers that temporarily store it in RAM while the system determines the next point to send it on the delivery route. Under the court's definition, an ISP could access, copy and read the mail at any of these points. Anyone who is not exempt under the Stored Communications Act, however, could still be charged under that law, though penalties for violating this law are less severe than penalties for violating the Wiretap Act.

Last week's ruling means that e-mail has fewer protections than phone conversations and postal mail. Granting e-mail providers the ability to read e-mail is equivalent to granting postal workers the right to open and read any mail while it's at a post office for sorting, but not while it's in transit between post offices or being hand-delivered to a recipient's home or business.

The ruling also has repercussions for voicemail messages, as long as certain provisions in the Patriot Act remain law.

Before the Patriot Act, the legal definition of wire communication included voicemail messages. This meant that authorities had to obtain a wiretap order to access voicemail messages or face charges of illegal interception under the Wiretap Act. Under the Patriot Act, however, the definition of wire communication *changed*. Voicemail messages are now considered stored communication, like e-mail. As a result, law enforcement authorities need only a search warrant to access voicemail messages, a much easier process than obtaining a wiretap order.

The provision in the Patriot Act that changed this is set to sunset in December 2005, but if the current administration has its way, the law will be renewed.

The changes in the Patriot Act, combined with the decision in the Councilman case, also mean that a phone company could now access voicemail messages without customers' permission and not be charged with intercepting the messages under the Wiretap Act. They also would not be charged under the Stored Communications Act, since they are exempt from this statute.

If all of this is hard to follow, it's just as confusing to the people who make their living interpreting the law.

''This is one of the most complex and convoluted areas of the law that you will run across,'' said Lee Tien, senior staff attorney for the Electronic Frontier Foundation. ''The statutes themselves are not models of clarity. Even for the judges it's complicated, and then, on top of the statutes, you add the changing technology.''

In the end, in the absence of laws to preserve privacy, the best solution for e-mail users to protect their privacy is to use encryption. But until encryption for voicemail messages becomes common, you'll have to settle for talking in tongues.

[From the New York Times, July 6, 2004]

YOU'VE GOT MAIL (AND COURT SAYS OTHERS CAN READ IT)

(By SAUL HANSELL)

When everything is working right, an e-mail message appears to zip instantenously from the sender to the recipient's inbox. But in reality, most messages make several momentary stops as they are processed by various computers en route to their destination.

Those short stops may make no difference to the users, but they make an enormous difference to the privacy that e-mail is accorded under federal law.

Last week a Federal appeals court in Boston ruled that federal wiretap laws do not apply to e-mail messages if they are stored, even for a millisecond, on the computers of the Internet providers that process them—meaning that it can be legal for the government or others to read such messages without a court order.

The ruling was a surprise to many people, because in 1986 Congress specifically amended the wiretap laws to incorporate new technologies like e-mail. Some argue that the ruling's implications could affect emerging applications like Internet-based phone calls and Gmail Google's new e-mail service, which shows advertising based on the content of a subscriber's e-mail messages.

''The court has eviscerated the protections that Congress established back in the 1980's,'' said Marc Rotenberg, the executive director of the Electronic Privacy Information Center, a civil liberties group.

But other experts argue that the Boston case will have little practical effect. The outcry, said Stuart Baker, a privacy lawyer with Steptoe & Johnson in Washington, is ''much ado about nothing.''

Mr. Baker pointed out that even under the broadest interpretation of the law, Congress made it easier for prosecutors and lawyers in civil cases to read other people's e-mail messages than to listen to their phone calls. The wiretap law—which requires prosecutors to prove their need for a wiretap and forbids civil litigants from ever using them—applies to e-mail messages only when they are in transit.

But in a 1986 law, Congress created a second category, called stored communication, for messages that had been delivered to recipients' inboxes but not yet read. That law, the Stored Communications Act, grants significant protection to e-mail messages, but does not go as far as the wiretap law: it lets prosecutors have access to stored messages with a search warrant, while imposing stricter requirements on parties in civil suits.

Interestingly, messages that have been read but remain on the Internet provider's computer system have very little protection. Prosecutors can typically gain access to an opened e-mail message with a simple subpoena rather than a search warrant. Similarly, lawyers in civil cases, including divorces, can subpoena opened e-mail messages.

The case in Boston involved an online bookseller, now called Alibris. In 1998, the company offered e-mail accounts to book dealers and, hoping to gain market advantage, secretly copied messages they received from Amazon.com. In 1999, Alibris and one employee pleaded guilty to criminal wiretapping charges.

But a supervisor, Bradford C. Councilman, fought the charges, saying he did not know

about the scheme. He also moved to have the case dismissed on the ground that the wiretapping law did not apply. He argued that because the messages had been on the hard drive of Alibris's computer while they were being processed for delivery, they counted as stored communication. The wiretap law bans a company from monitoring the communications of its customers, except in a few cases. But it does not ban a company from reading customers' stored communications.

''Congress recognized that any time you store communication, there is an inherent loss of privacy,'' said Mr. Councilman's lawyer, Andrew Good of Good & Cormier in Boston.

In 2003, a Federal district court in Boston agreed with Mr. Councilman's interpretation of the wiretap law and dismissed the case. Last week, the First Circuit Court of Appeals, in a 2-to-1 decision, affirmed that decision.

Because most major Internet providers have explicit policies against reading their customers' e-mail messages, the ruling would seem to have little effect on most people.

But this year Google is testing a service called Gmail, which electronically scans the content of the e-mail messages its customers receive and then displays related ads. Privacy groups have argued that the service is intrusive, and some have claimed it violates wiretap laws. The Councilman decision, if it stands, could undercut that argument.

Federal prosecutors, who often argue that wiretap restrictions do not apply in government investigations, were in the somewhat surprising position of arguing that those same laws should apply to Mr. Councilman's conduct. A spokesman for the United States attorney's office in Boston said the department had not decided whether to appeal.

Mr. Baker said that another Federal appeals court ruling, in San Francisco, is already making it hard for prosecutors to retrieve e-mail that has been read and remains on an Internet provider's system.

In that case, Theofel v. Farey-Jones, a small Internet provider responded to a subpoena by giving a lawyer copies of 339 e-mail messages received by two of its customers.

The customers claimed the subpoena was so broad it violated the wiretap and stored communication laws. A district court agreed the subpoenas were too broad, but ruled they were within the law. The plaintiffs appealed, and the Justice Department filed a friend of the court brief arguing that the Stored Communications Act should not apply.

In February, the appeals court ruled that e-mail stored on the computer server of an Internet provider is indeed covered by the Stored Communications Act, even after it has been read. The court noted that the act refers both to messages before they are delivered and to backup copies kept by the Internet provider. ''An obvious purpose for storing a message on an I.S.P.'s server after delivery,'' the court wrote, ''is to provide a second copy of the message in the event that the user needs to download it again—if, for example, the message is accidentally erased from the user's own computer.''

Calling e-mail ''stored communication'' does not necessarily reduce privacy protections for most e-mail users. While the Councilman ruling would limit the applicability of wiretap laws to e-mail, it appears to apply to a very small number of potential cases. The Theofel decision, by contrast, by defining more e-mail as ''stored communications,'' is restricting access to e-mail in a wide range of cases in the Ninth Circuit, and could have a far greater effect on privacy of courts in the rest of the country follow that ruling.

ADDITIONAL STATEMENTS

IBM AND THE RESEARCH TRIANGLE PARK

• Mrs. DOLE. Mr. President, when IBM joined the Research Triangle Park as its first major tenant in 1965, this company helped establish the Research Triangle Park as the premier technological, biotech, and economic development powerhouse for North Carolina.

Today I thank and congratulate IBM for its decades of support and investment in the Research Triangle Park and the surrounding communities in North Carolina. As the largest employer in the Triangle Park, IBM is an excellent example of corporate citizenship that provides dependable, high-paying jobs in both the area and worldwide.

With over 13,000 jobs in the Triangle Park alone, the largest concentration of IBM jobs worldwide, IBM uses the graduates and resources from the State's extensive college and university system. IBM invests in our State by helping to keep North Carolina talent at home.

Please join me and other North Carolina leaders in congatulating IBM on its commitment to build a better company for our region and wishing IBM and the Research Triangle Park ongoing success as they broaden their partnership with the people of my home State.•

MESSAGE FROM THE HOUSE

At 3:02 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4754. An act making appropriations for the Department of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2005, and for other purposes.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 4754. An act making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2005, and for other purposes; to the Committee on Appropriations.

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

S. 2629. A bill to amend the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 to eliminate the coverage gap, to eliminate HMO subsidies, to repeal health savings accounts, and for other purposes.

S. 2630. A bill to amend title 5, United States Code to establish a national health program administered by the Office of Personnel Management to offer Federal employee health benefits plans to individuals who are not Federal employee, and for other purposes.

S. 2631. A bill to require the Federal Trade Commission to monitor and investigate gasoline prices under certain circumstances.

S. 2632. A bill to establish a first responder and terrorism preparedness grant information hotline, and for other purposes.

S. 2633. A bill to amend the Federal Power Act to provide refunds for unjust and unreasonable charges on electric energy in the State of California.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROBERTS, from the Select Committee on Intelligence:

Special Report entitled ''Report of the Select Committee on Intelligence on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq'' (Rept. No. 108–301). Additional views filed.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred to as indicated:

By Mr. LEAHY:

S. 2636. A bill to criminalize Internet scams involving fraudulently obtaining personal information, commonly known as phishing; to the Committee on the Judiciary.

By Mr. GRAHAM of South Carolina:

S. 2637. A bill to amend the National Labor Relations Act to ensure the right of employees to a secret-ballot election conducted by the National Labor Relations Board; to the Committee on Health, Education. Labor, and Pensions.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HARKIN (for himself, Mr. COCHRAN, Mr. ROBERTS, Mr. DASCHLE, Mr. CRAPO, Mr. FITZGERALD, Mr. CONRAD, Mr. COLEMAN, Mr. LEAHY, Mrs. LINCOLN, Mr. KOHL, Mrs. CLINTON, Mr. JOHNSON, Mr. DORGAN, Mr. LUGAR, and Mr. DAYTON):

Res. 402. A resolution expressing the sense of the Senate with respect to the 50th anniversary of the food aid programs established under the Agricultural Trade Development and Assistance Act of 1954; considered and agreed to.

By Ms. SNOWE (for herself, Mr. MCCAIN, Mr. HOLLINGS, Mr. DODD, Mr. KENNEDY, Mr. CHAFEE, Mrs. BOXER, Mrs. COLLINS, Mr. FITZGERALD, Mr. REED, Mr. CORZINE, Mr. JEFFORDS, Mr. WYDEN, Mr. BIDEN, and Mr. LIEBERMAN):

S. Con. Res. 122. A concurrent resolution expressing the sense of the Congress regarding the policy of the United States at the

56th Annual Meeting of the International Whaling Commission; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 1411

At the request of Mr. KERRY, the names of the Senator from Vermont (Mr. LEAHY) and the Senator from Rhode Island (Mr. REED) were added as cosponsors of S. 1411, a bill to establish a National Housing Trust Fund in the Treasury of the United States to provide for the development of decent, safe, and affordable housing for low-income families, and for other purposes.

S. 1890

At the request of Mr. ENZI, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1890, a bill to require the mandatory expensing of stock options granted to executive officers, and for other purposes.

S. 2313

At the request of Mr. GRAHAM of Florida, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 2313, a bill to amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, and for other purposes.

S. 2338

At the request of Mr. BOND, the mane of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 2338, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 2340

At the request of Mr. BINGAMAN, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 2340, a bill to reauthorize title II of the Higher Education Act of 1965.

S. 2412

At the request of Mr. BOND, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2412, to expand Parents as Teachers programs and other programs of early childhood home visitation, and for other purposes.

S. 2526

At the request of Mr. BOND, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 2526, a bill to reauthorize the Children's Hospitals Graduate Medical Education Program.

S. 2568

At the request of Mr. BIDEN, the names of the Senator from Delaware (Mr. CARPER) and the Senator from Illinois (Mr. FITZGERALD) were added as cosponsors of S. 2568, a bill to require the Secretary of the Treasury to mint coins in commemoration of the tercentenary of the birth of Benjamin Franklin, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEAHY:

S. 2636. A bill to criminalize Internet scams involving fraudulently obtaining personal information, commonly known as phishing; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, today I am introducing a bill, the Anti-Phishing Act of 2004, that targets a large and growing class of crime that is spreading across the Internet.

Phishing is a rapidly growing class of identity theft scams on the Internet that is causing both short-term losses and long-term economic damage.

In the short-term, these scams defraud individuals and financial institutions. Some estimates place the cost of phishing at over two billion dollars just over the last 12 months.

In the long run, phishing undermines the Internet itself. By making consumers uncertain about the integrity of the Internet's complex addressing system, phishing threatens to make us all less likely to use the Internet for secure transactions. If you can't trust where you are on the web, you are less likely to use it for commerce and communications.

Phishing is spelled ''P-H-I-S-H-I-N-G.'' Those well-versed in popular culture may guess that it was named after the phenomenally popular Vermont band, Phish. But phishing over the Internet was in fact named from the sport of fishing, as an analogy for its technique of luring Internet prey with convincing email bait. The ''F'' is replaced by a ''P-H'' in keeping with a computer hacker tradition.

Phishing attacks usually start with emails that are, in Internet jargon, ''spoofed.'' That is, they are made to appear to be coming from some trusted financial institution or commercial entity. The spoofed email usually asks the victim to go to a website to confirm or renew private account information. These emails offer a link that appears to take the victim to the website of the trusted institution. In fact the link takes the victim to a sham website that is visually identical to that of the trusted institution, but is in fact run by the criminal. When the victim takes the bait and sends their account information, the criminal uses it—sometimes within minutes—to transfer the victim's funds or to make purchases. Phishers are the new con artists of cyberspace.

To give an idea of how easy it is to be fooled, we have reproduced some recent phishing charts, with the help of the Anti-Phishing Working Group. These are just two examples of a problem that affects countless companies. The website on the right is an actual website of MBNA, a well-established financial institution and credit card issuer. On the left is a recently discovered phishing site that mimicked the MBNA site.

As you can see, the two websites are practically identical. Both have the MBNA logo, and both have the same graphics, in the same layout. But if you end up going to the website on the left, when you enter your account information, you are giving it to an identity thief.

As another example, the next two websites both appear to be from eBay. Again, the one on the right is from the genuine website. The one on the left is a fake website that is controlled by a phisher. As you can see, if you end up at the website on the left, it would be next to impossible to know that you are not at the real eBay website. Informed Internet users can avoid this problem if they simply use their web browser to go to the website, instead of using a link sent to them in an email, but far too many people do not do this.

This is a growing problem. Phishing is on the rise. In recent months there has been an explosion of these types of attacks. As you can see from the next chart, these attacks are growing at an alarming rate. Roughly one million Americans already have been victims of phishing attacks.

And phishing attacks are increasingly sophisticated. Early phishing attacks were by novices, but there is evidence now that some attacks are backed by organized crime. And some attacks these days include spyware, which is software that is secretly installed on the victim's computer, which waits to capture account information when the victim even goes to legitimate websites.

Phishers also have become more sophisticated in how they cast their huge volumes of email bait on the Internet waters. Security experts recently discovered that vast networks of home computers are being hijacked by hackers using viruses, and then they are rented to phishers—all without the knowledge of the owners of these home computers.

Some phishers can be prosecuted under wire fraud or identity theft statutes, but often these prosecutions take place only after someone has been defrauded. Moreover, the mere threat of phishing attacks undermines everyone's confidence in the Internet. When people cannot trust that websites are what they appear to be, they will not use the Internet for their secure transactions. So traditional wire fraud and identity theft statutes are not sufficient to respond to phishing.

The Anti-Phishing Act of 2004 protects the integrity of the Internet in two ways. First, it criminalizes the bait. It makes it illegal to knowingly send out spoofed email that links to sham websites, with the intention of committing a crime. Second, it criminalizes the sham websites that are the true scene of the crime.

It makes it illegal to knowingly create or procure a website that purports to be a legitimate online business, with the intent of collecting information for some criminal purpose.

There are important First Amendment concerns to be protected. The Anti-Phishing Act protects parodies and political speech from being prosecuted as Phishing.

We have worked closely with various public interest organizations to ensure that the Anti-Phishing Act does not impinge on the important democratic role that the Internet plays.

To many Americans, phishing is a new word. It certainly is a new form of an old crime. It also is a serious crime, and we need to act aggressively to keep phishing from infecting the Internet and from eroding the public's trust in online commerce and communication. I look forward to working with others in the Senate in addressing this growing threat to the Internet, with effective and responsible action.

Again, this is called the Anti-Phishing Act. It targets a large and growing class of crime that is spreading across the Internet.

Phishing is a rapidly growing class of identity theft scams. It causes both short-term losses, but long-term economic problems. In the short-term, these scams defraud individuals and financial institutions.

To give some idea that this is not a minor matter, some estimates place the cost of phishing at over $2 billion over the last 12 months. You can imagine the outcry in this country if they said we had $2 billion worth of bank robberies in that same period of time. But it is not only the economic loss that undermines the Internet itself; it makes consumers uncertain about the integrity of the Internet's complex addressing system. It makes us all less apt to use it for commerce and communication, because if you cannot trust where you are on the Web, you are not going to use it for commerce or communication.

Incidentally, fishing is spelled P-H-I-S-H-I-N-G. Those who are well versed in popular culture might think it was named after the phenomenally popular Vermont band called Phish. But phishing over the Internet was named for the sport of fishing, as an analogy for its technique of luring Internet prey with a convincing e-mail bait. The ''F'' was replaced by ''PH'' in keeping with computer hacker tradition.

Phishing usually starts with e-mails that are, in Internet jargon, ''spoofed.'' They appear to come from some trusted commercial entity or financial institution. The spoofed e-mail asks the victim to go to a Web site and confirm their identity, in effect, their Social Security number, credit card numbers, and so on. What it does is, the victim thinks they are going to a trusted institution, perhaps one they have dealt with for years. Instead, it takes them to a sham Web site that is visually identical to that of the trusted institution, but it is run by a criminal. When the victim takes the bait, when they send their account information, of course, the criminal uses it. Sometimes they use it within minutes. They can transfer the victim's funds or make purchases. These phishers are new con artists of cyberspace.

I will give you an idea of how easy it is to do it. Here on this chart we have the genuine Web site. We actually had to mark them as ''genuine Web site'' and ''fake Web site'' because they look so identical. I am a heavy user of the Internet, and I could not tell them apart. On the other side, of course, is the fake Web site. They both have the MBNA logo. That is a trusted financial institution. They have the same graphic layout.

Suppose you were a customer of MBNA and they asked you to put your user name in, your password, and so on, and you go on there and they would continue to ask information. You would have given up your account number, whatever ID number you use, and it could be 20 minutes later, when you go on the right site and you want to withdraw some money or make a cash transfer, you may find it is all gone in that short time.

In fact, we also have a chart for eBay. I wasn't going to show it, but it is worthwhile, I think. We will show the two from eBay. Again, I have had them marked ''genuine Web site'' and ''fake Web site.'' Here is the genuine one. For those who use PayPal, it is increasingly used if you are using eBay. Anybody who has done that is well aware of PayPal. It is something you could be safe with, you know where your money is going, you know who is handling it, and you know you are going to get paid for something you might have sold.

Look what we have here. When you look at it, it is hard to tell the difference. Of course, the internal address is different. What do you do? You send money, you pay money, you are supposed to receive money. You are not going to do it. Somebody else is going to do it and they are going to walk off not only with your money but with your trust of the Internet.

That is why it is important that we do this, that we have some way of criminalizing this. We have in every one of our States businesses that thrive and survive because they can use the Internet. This is trying to stop them. Again, we must address this growing threat to Internet users.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 402—EXPRESSING THE SENSE OF THE SENATE WITH RESPECT TO THE 50TH ANNIVERSARY OF THE FOOD AID PROGRAMS ESTABLISHED UNDER THE AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954

Mr. HARKIN (for himself, Mr. COCHRAN, Mr. ROBERTS, Mr. DASCHLE, Mr. CRAPO, Mr. FITZGERALD, Mr. CONRAD, Mr. COLEMAN, Mr. LEAHY, Mrs. LINCOLN, Mr. KOHL, Mrs. CLINTON, Mr. JOHNSON, Mr. DORGAN, Mr. LUGAR, and Mr. DAYTON) submitted the following resolution; which was considered and agreed to:

S. RES. 402

Whereas, in the aftermath of the Second World War, many countries did not have sufficient cash to buy the agricultural commodities needed to feed the people of those countries, especially in war-torn Europe and Asia;

Whereas, during the term of President Dwight David Eisenhower, it became apparent that the abundance of food available in the United States could be used as an instrument in building a durable peace after the Second World War;

Whereas a concessional credit program was established under title I of the Agricultural Trade Development and Assistance Act of 1954 (commonly known as ''P.L. 480'') (7 U.S.C. 1701 et seq.), signed into law on July 10, 1954, to allow for sales of agricultural commodities from the United States to developing countries for dollars on generous credit terms or for local currencies, with proceeds to be used by participating governments or nongovernmental private entities to encourage economic development;

Whereas since the enactment of the Agricultural Trade Development and Assistance Act of 1954, the title I program has facilitated sales of agricultural commodities from the United States, totaling an estimated $30,000,000,000 to nearly 100 countries;

Whereas the Food for Peace program was established under title II of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1721 et seq.), to provide humanitarian assistance to poor and hungry people in developing countries, based on legislation originally introduced by Senator Hubert Humphrey;

Whereas during the half-century since the establishment of the Food for Peace program, the United States Agency for International Development and the Department of Agriculture have worked together to provide 107,000,000 tons of food aid to developing countries, helping an estimated 3,400,000,000 people through 2003;

Whereas the government of the United States has depended on the commitment, skill, and experience of dozens of private voluntary organizations based in the United States, as well as the United Nations World Food Program, to carry out the Food for Peace program on the ground in developing countries; and

Whereas a number of countries that were early beneficiaries of both programs have emerged as democracies and strong commercial trading partners, including South Korea, Taiwan, the Philippines, Thailand, Malaysia, Singapore, Mexico, and Turkey, in part as a result of development projects and food distribution programs conducted using agricultural commodities from the United States: Now, therefore, be it

Resolved, That the Senate—

(1) on the 50th anniversary of the date of enactment of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.) on July 10, 1954, recognizes the United States Agency for International Development, the Department of Agriculture, and associated partners for—

(A) providing emergency food assistance to address famine or other extraordinary relief requirements;

(B) forging linkages between the abundance of food produced under the agricultural system of the United States and people in need of assistance throughout the world;

(C) undertaking activities to alleviate hunger;

(D) promoting economic, agricultural, educational, and community development in developing countries;

(E) identifying the private partners capable of carrying out the mission of the programs established under that Act;

(F) implementing procedures governing the use and evaluation of the programs and funds; and

(G) overseeing the use of taxpayers dollars to carry out the programs; and

(2) declares that July 10, 2004, is a day that recognizes—

(A) the 50th anniversary of the establishment of the concessional credit program and the Food for Peace program under the Agricultural Trade and Development Act of 1954 (7 U.S.C. 1691 et seq.); and

(B) the accomplishments of the United States Agency for International Development, the Department of Agriculture, and associated private voluntary organization and nongovernmental organization partners in alleviating hunger and poverty, bolstering development, and restoring hope around the world.

SENATE CONCURRENT RESOLUTION 122—EXPRESSING THE SENSE OF THE CONGRESS REGARDING THE POLICY OF THE UNITED STATES AT THE 56TH ANNUAL MEETING OF THE INTERNATIONAL WHALING COMMISSION

Ms. SNOWE (for herself, Mr. MCCAIN, Mr. HOLLINGS, Mr. DODD, Mr. KENNEDY, Mr. CHAFEE, Mrs. BOXER, Ms. COLLINS, Mr. FITZGERALD, Mr. REED, Mr. CORZINE, Mr. JEFFORDS, Mr. WYDEN, Mr. BIDEN, AND Mr. LIEBERMAN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 122

Whereas whales have very low reproductive rates, making many whale populations extremely vulnerable to pressure from commercial whaling;

Whereas whales migrate throughout the world's oceans and international cooperation is required to successfully conserve and protect whale stocks;

Whereas in 1946 a significant number of the nations of the world adopted the International Convention for the Regulation of Whaling, which established the International Whaling Commission to provide for the proper conservation of whale stocks;

Whereas in 2003 the Commission established a Conservation Committee, open to all members of the Commission, for the purpose of facilitating efficient and effective coordination and development of conservation recommendations and activities, which are fully consistent with the conservation objectives stated in the 1946 Convention;

Whereas the Commission adopted a moratorium on commercial whaling in 1982 in order to conserve and promote the recovery of whale stocks, many of which had been hunted to near extinction by the commercial whaling industry;

Whereas the Commission has designated the Indian Ocean and the ocean waters around Antarctica, as whale sanctuaries to further enhance the recovery of whale stocks;

Whereas many nations of the world have designated waters under their jurisdiction as whale sanctuaries where commercial whaling is prohibited, and additional regional whale sanctuaries have been proposed by nations that are members of the Commission;

Whereas two member nations currently have reservations to the Commission's moratorium on commercial whaling, and one member nation is currently conducting commercial whaling operations in spite of the moratorium and the protests of other nations;

Whereas the Commission has adopted several resolutions at recent meetings asking member nations to halt commercial whaling activities conducted under reservation to the moratorium and to refrain from issuing special permits for research involving the killing of whales;

Whereas one member nation of the Commission has taken a reservation to the Commission's Southern Ocean Sanctuary and also continues to conduct unnecessary lethal scientific whaling in the Southern Ocean and in the North Pacific Ocean;

Whereas one member nation of the Commission has taken a reservation to the Commission's Southern Ocean Sanctuary and also continues to conduct unnecessary lethal scientific whaling in the Southern Ocean and in the North Pacific Ocean;

Whereas whale meat and blubber is being sold commercially from whales killed pursuant to such unnecessary lethal scientific whaling, further undermining the moratorium on commercial whaling;

Whereas the Commission's Scientific Committee has repeatedly expressed serious concerns about the scientific need for such lethal research and recognizes the importance of demonstrating and expanding the use of non-lethal scientific research methods;

Whereas last year one member nation unsuccessfully sought an exemption allowing commercial whaling of up to 150 minke whales and 150 Bryde's whales, contrary to the moratorium and without review of the scientific committee, and continues to seek avenues to allow lethal takes of whales by vessels from specific communities in a manner that would undermine the moratorium on commercial whaling;

Whereas more than 8500 whales have been killed in lethal scientific whaling programs since the adoption of the commercial whaling moratorium and the lethal take of whales under scientific permits has increased both in quantity and species, with species now including minke, Bryde's, sei, and sperm whales; and

Whereas engaging in commercial whaling under reservation and lethal scientific whaling undermines the conservation program of the Commission: Now, therefore, be it Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that—

(1) at the 56th Annual Meeting of the International Whaling Commission the United States should—

(A) remain firmly opposed to commercial whaling;

(B) support the purposes and functions of the Conservation Committee, which provides a system for ensuring good governance of the Commission's conservation activities;

(C) initiate and support efforts to ensure that all activities conducted under reservations to the Commission's moratorium or sanctuaries are ceased;

(D) oppose the unnecessary lethal taking of whales for scientific purposes, seek support for expanding the use of non-lethal research methods, and seek to end the sale of whale meat and blubber from whales killed for unnecessary lethal scientific research;

(E) seek the Commission's support for specific efforts by member nations to end trade in whale meat;

(F) support the permanent protection of whale populations through the establishment of whale sanctuaries in which commercial whaling is prohibited; and

(G) support efforts to expand data collection on whale populations, monitor and reduce whale bycatch and other incidental impacts, and otherwise expand whale conservation efforts; and

(2) the United States should make full use of all appropriate diplomatic mechanisms, relevant international laws and agreements, and other appropriate mechanisms to implement the goals set forth in paragraph (1).

The PRESIDING OFFICER. The majority leader.

AMENDING THE E-GOVERNMENT ACT OF 2002

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 610, H.R. 1303.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 610) to amend the E-Government Act of 2002 with respect to rulemaking authority of the Judicial Conference.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 1303) was read the third time and passed.

50TH ANNIVERSARY OF THE FOOD AID PROGRAM

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 402, which was submitted earlier today by Senators HARKIN and COCHRAN.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 402) expressing the sense of the Senate with respect to the 50th anniversary of the Food Aid Program established under the Agricultural Trade Development and Assistance Act of 1954.

There being no objection, the Senate proceeded to consider the resolution.

Mr. HARKIN. Mr. President, in recognition of the 50th anniversary of the Food for Peace and concessional credit programs established in the Agricultural Trade and Development Act of 1954 enacted on July 10, 1954, Senator COCHRAN and I are submitting a Senate Resolution to honor those programs' many achievements over the past half century.

The 83rd Congress, working with the Eisenhower administration, recognized that the productive capacity of the U.S. agricultural sector was outstripping the food and feed needs of our domestic economy and that citizens of many war-torn countries had need for our food but could not afford to pay for it. They saw that the abundance of food available in the United States could be utilized as an instrument in building a durable peace after the Second World War.

Through the past 50 years, the various programs established under the Agricultural Trade and Development

Act of 1954, known as P.L. 480, have helped billions of people in developing countries. According to USDA estimates, the Title I program, which provides concessional credit to developing countries to purchase U.S. agricultural commodities, has enabled the sale of $30 billion worth of commodities to nearly 100 countries. In addition, the Food for Peace program, authorized under the provisions of Title II of the Act, has helped an estimated 3.4 billion people through 2003. These figures represent accomplishments we should be proud of.

Behind these figures lie many years of commitment and hard work by employees of the U.S. Agency for International Development, the U.S. Department of Agriculture and their partners in private voluntary organizations and intergovernmental organizations such as Catholic Relief Services, CARE, World Vision, and the UN's World Food Program. Their crucial efforts include delivering food and development projects on the ground in developing countries, assembling and shipping commodities from the United States under the program, and evaluating project requests and monitoring the programs in Washington, DC. The successful implementation of the programs also requires the cooperation of governments and non-governmental organizations in the developing countries in which the projects occur.

With such a record of achievement in the past half century, it is crucial that Members of Congress and the administration do all they can to make sure these programs remain vigorous over the next half century and beyond.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 402) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 402

Whereas, in the aftermath of the Second World War, many countries did not have sufficient cash to buy the agricultural commodities needed to feed the people of those countries, especially in war-torn Europe and Asia;

Whereas, during the term of President Dwight David Eisenhower, it became apparent that the abundance of food available in the United States could be used as an instrument in building a durable peace after the Second World War;

Whereas a concessional credit program was established under title I of the Agricultural Trade Development and Assistance Act of 1954 (commonly known as ''P.L. 480'') (7 U.S.C. 1701 et seq.), signed into law on July 10, 1954, to allow for sales of agricultural commodities from the United States to developing countries for dollars on generous credit terms or for local currencies, with proceeds to be used by participating governments or nongovernmental private entities to encourage economic development;

Whereas since the enactment of the Agricultural Trade Development and Assistance Act of 1954, the title I program has facilitated sales of agricultural commodities from the United States, totaling an estimated $30,000,000,000 to nearly 100 countries;

Whereas the Food for Peace program was established under title II of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1721 et seq.), to provide humanitarian assistance to poor and hungry people in developing countries, based on legislation originally introduced by Senator Hubert Humphrey;

Whereas during the half-century since the establishment of the Food for Peace program, the United States Agency for International Development and the Department of Agriculture have worked together to provide 107,000,000 tons of food aid to developing countries, helping an estimated 3,400,000,000 people through 2003;

Whereas the government of the United States has depended on the commitment, skill, and experience of dozens of private voluntary organizations based in the United States, as well as the United Nations World Food Program, to carry out the Food for Peace program on the ground in developing countries; and

Whereas a number of countries that were early beneficiaries of both programs have emerged as democracies and strong commercial trading partners, including South Korea, Taiwan, the Philippines, Thailand, Malaysia, Singapore, Mexico, and Turkey, in part as a result of development projects and food distribution programs conducted using agricultural commodities from the United States: Now, therefore, be it

Resolved, That the Senate—

(1) on the 50th anniversary of the date of enactment of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.) on July 10, 1954, recognizes the United States Agency for International Development, the Department of Agriculture, and associated partners for—

(A) providing emergency food assistance to address famine or other extraordinary relief requirements;

(B) forging linkages between the abundance of food produced under the agricultural system of the United States and people in need of assistance throughout the world;

(C) undertaking activities to alleviate hunger;

(D) promoting economic, agricultural, educational, and community development in developing countries;

(E) identifying the private partners capable of carrying out the mission of the programs established under that Act;

(F) implementing procedures governing the use and evaluation of the programs and funds; and

(G) overseeing the use of taxpayers dollars to carry out the programs; and

(2) declares that July 10, 2004, is a day that recognizes—

(A) the 50th anniversary of the establishment of the concessional credit program and the Food for Peace program under the Agricultural Trade and Development Act of 1954 (7 U.S.C. 1691 et seq.); and

(B) the accomplishments of the United States Agency for International Development, the Department of Agriculture, and associated private voluntary organization and nongovernmental organization partners in alleviating hunger and poverty, bolstering development, and restoring hope around the world.

SUPPORTING THE GOALS OF NATIONAL MARINA DAY

Mr. FRIST. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of S. Res. 361 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 361) supporting the goals of National Marina Day and urging marinas to continue providing environmentally friendly gateways to boating.

There being no objection, the Senate proceed to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 361) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 361

Whereas the people of the United States highly value their recreational time and their ability to access the waterways of the United States, one of the Nation's greatest natural resources;

Whereas in 1928, the National Association of Engine and Boat Manufacturers first used the word ''marina'' to describe a recreational boating facility;

Whereas the United States is home to more than 12,000 marinas that contribute substantially to local communities by providing safe and reliable gateways to boating;

Whereas the marinas of the United States serve as stewards of the environment and actively seek to protect the waterways that surround them for the enjoyment of this generation and generations to come;

Whereas the marinas of the United States provide communities and visitors with a place where friends and families, united by a passion for the water, can come together for recreation, rest, and relaxation; and

Whereas the Marina Operators Association of America has designated August 14, 2004, as ''National Marina Day'' to increase awareness among citizens, policymakers, and elected officials about the many contributions that marinas make to communities: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals of National Marina Day; and

(2) urges that the marinas of the United States continue to provide environmentally friendly gateways to boating for the people of the United States.

MEASURES PLACED ON THE CALENDAR—S. 2629, S. 2630, S. 2631, S. 2632, S. 2633

Mr. FRIST. Mr. President, I understand there are five bills due for a second reading. I ask unanimous consent that the clerk read the titles for a second time en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will read the bills for the second time.

The assistant legislative clerk read as follows:

A bill (S. 2629) to amend the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 to eliminate the coverage gap, to eliminate HMO subsidies, to repeal health savings accounts, and for other purposes.

A bill (S. 2630) to amend title 5, United States Code, to establish a national health program administered by the Office of Personnel Management to offer Federal employee health benefits plans to individuals who are not Federal employees, and for other purposes.

A bill (S. 2631) to require the Federal Trade Commission to monitor and investigate gasoline prices under certain circumstances.

A bill (S. 2632) to establish a first responder and terrorism preparedness grant information hotline, and for other purposes.

A bill (S. 2633) to amend the Federal Power Act to provide refunds for unjust and unreasonable charges on electric energy in the State of California.

Mr. FRIST. Mr. President, I object to further proceeding en bloc.

The PRESIDING OFFICER. Objection is heard, and the bills will be placed on the calendar.

FEDERAL MARRIAGE AMENDMENT—MOTION TO PROCEED

Mr. FRIST. Mr. President, I now move to proceed to Calendar No. 620, S.J. Res. 40. I ask unanimous consent that the motion be set aside to recur on Monday, July 12.

The PRESIDING OFFICER. Is there objection?

The Senator from Nevada.

Mr. REID. Is this the matter——

The PRESIDING OFFICER. Is there objection?

Mr. REID. Asking through the Chair a question to the majority leader, is this the matter we are going to be working on next week?

Mr. FRIST. It is.

Mr. REID. I have worked a lot this afternoon and this morning clearing with our Members the fact that it would not be necessary that we deal with cloture on the motion to proceed. We have cleared that. We would also be in a position to have no amendments on the constitutional amendment that we are going to debate next week. Whatever the majority believes to be a reasonable time to debate that, we will be in agreement with that and have a vote on the resolution. We are cleared on our side to do that.

We would hope, if the majority leader can get a clearance on that, we can move forward and have a definite time sometime next week for a vote on the resolution itself. We are ready to move forward on it.

Yesterday, we believed it was necessary that we have the leader file this cloture motion on the motion to proceed, but we will not need that now. We are ready to rock and roll on the debate of this issue.

Mr. FRIST. Mr. President, for the benefit of our colleagues, we are talking about the issue surrounding marriage and the constitutional amendment and procedurally how best to address the issue. We have had debate and discussion over the course of the day. Because of the late hour, I was not able to talk to the managers on our side and have the same discussions as the other side has had as far as the best way to address the issue procedurally. Because of the late hour, I have not been able to reach our managers of the bill, but over the course of the weekend we will do that.

For the benefit of our colleagues, we will substantively be debating the issue Monday and Tuesday. In all likelihood, we will have a vote on Wednesday through one of the two modes that have been mentioned, but we will make a final decision Monday morning after we have had the opportunity to talk to the managers on our side as well.

Mr. REID. I simply state again, procedurally we are not going to be in the way. We are ready to move forward.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. If I could ask one other question before the majority leader begins to speak, are we going to have any votes on Monday? I have gotten a number of requests through Senator DASCHLE.

Mr. FRIST. We will not be voting on Monday. We will have no rollcall votes in Monday's session.

Mr. REID. We are coming in to debate the issue?

Mr. FRIST. Let me go ahead and do the unanimous consent, and then I will make another statement that is unrelated.

Mr. REID. Certainly.

ORDERS FOR MONDAY, JULY 12, 2004

Mr. FRIST. I ask unanimous consent that when the Senate completes its business today, it adjourn until 1 p.m. on Monday, July 12. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then resume consideration of the motion to proceed to S.J. Res. 40; provided further that the time until 6 p.m. be equally divided between the chairman and ranking member or their designees.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE JOBS BILL

Mr. FRIST. Mr. President, in a few moments, I am going to be making another statement before closing, but before doing that, I want to point out to our colleagues that over the course of today, there have been a number of meetings held between both sides of the aisle and leadership to keep moving along issues that are important to this body and to the American people. One of the bills that the assistant Democratic leader and myself and the Democratic leader and our leadership addressed earlier this morning is the jobs in manufacturing bill, the FSC/ETI bill, and the efforts that we are making to move toward conference. This bill has passed the Senate, it has passed the House of Representatives, and now we are doing our best to address how to get to conference. This is a time-sensitive matter because the tariffs on U.S. products are increasing.

Since we passed the Senate bill and the House bill, these tariffs, which started at 5 percent in March and reached 9 percent on July 1, continue to increase at 1 percent a month.

We spent 14 days debating the bill. We had 100 amendments, made real progress, and now it is important that we go to conference to fully address and resolve the differences between the House and the Senate bills. For the benefit of all of our colleagues, I wanted to let them know that we are in constant discussion about how best to get to conference.

HIV/AIDS

Mr. FRIST. Mr. President, I want to very briefly, before bringing us formally an end to this week, address an issue that sits on the back burner all too often. It is an issue that affects mankind globally in a very direct way, in a moral sense. It is the HIV/AIDS virus. I speak today because on Tuesday of this week, UNAIDS released a comprehensive report on the spread of global HIV/AIDS.

This little, tiny virus, which people knew nothing about 23 years ago, has killed over 23 million people. The sobering statistics that were released this week are grim. Last year, the number of newly infected victims reached an all-time high of 5 million. The number of people living with this little virus has gone up in nearly every region of the world. The numbers have increased. The UNAIDS chief told the Associated Press:

The virus is running faster than all of us.

Every 14 seconds a child is orphaned by AIDS. According to the U.N. report:

An estimated 15 million children under the age of 18 worldwide have lost one or both parents to AIDS.

In Swaziland and in Botswana, over a third of the population, one in three people, has the HIV virus. One-third of the country, if not treated, will end up dying from a terrible, a painful, and an entirely preventable disease.

One out of three people in Swaziland and Botswana, these are staggering numbers. It is hard to comprehend. When you hear the statistics, it is hard to relate them to real people on the ground. I have had the opportunity to do just that because each year I travel, not as a Senator but as a physician, to Africa. While I am there, I see the devastation in real people's eyes and lives, the destruction of the family, the destruction of the most productive fabric

of society—dying, disappearing because of this little virus.

Every time I go to Africa—last year I was there in September—I am overwhelmed by the devastation this little vicious virus causes. To me, and I know to the distinguished Senator occupying the chair now, who also has spent his life studying disease and viruses and the like, it is remarkable because in 1983 we didn't know this thing existed. It probably didn't really exist as we know it today in the United States of America in 1983, when both I and probably the distinguished Senator in the chair were not that old. I was in my training at the time. To think that little virus is devastating the world in the way it has over a 21-year period is just unbelievable to me.

If you walk through a village in Africa, or parts of Africa, it becomes apparent what this virus is doing. You see older people and you see little kids running around. What you do not see is people from about 19 years of age to 28 or 30 years of age, or 35, right through that age. That whole layer of the population has been wiped out by this virus. That segment is also usually the most productive, strongest part of a society and it is just wiped out.

The young boys and girls you see running around, if you project that out, are left to fend for themselves. They might live with their grandparents or great-grandparents, but they generally don't have the sort of mentors which that age would otherwise be provided. Mature beyond their years, these little kids watch hopelessly as their parents die, as their uncles die, as their aunts die. When I say 35 percent of the population has HIV/AIDS, that is what it means when you are on the ground.

That is depressing. That is the depressing part. Despite that depressing picture, there is a lot of hope. If you look in countries such as Brazil and Thailand, there has been a real success in keeping those infection rates down. Uganda has achieved remarkable success.

President Museveni, from Uganda, was here a few weeks ago. I had the opportunity to speak with him about their success. They have used some innovative programs. They have really pioneered programs we know are successful.

The one we talk about the most and has become a model for much of the global effort is the ABC program, a program of A, abstinence; B, be faithful to your partner; and C, condom use if the A and B are ineffective. So the strategy of ABC was pioneered in Uganda. It took Presidential leadership there. President Museveni was the President who, in every speech, talked about HIV/AIDS, which really wasn't popular when he started, about 15 years ago, to do so.

The strategy incorporates both reducing the risk through the use of condoms with a strategy of risk avoidance through the message of limiting sexual partners.

It is totally preventable. The disease itself, this little virus and the contagiousness of the virus is totally preventable.

The comprehensive strategy is working. Uganda's HIV/AIDS infection rate has steadily declined. In 2001, the infection rate for 18- to 49-year-olds was 5 percent. In Kampala, which is a major urban center in Uganda, where HIV/AIDS once raged, aggressive intervention lowered it from 29 percent down to 8 percent.

I had the opportunity to operate at a wonderful hospital in Kampala about 2 years ago, 3 years ago. So to see that remarkable progress, cutting the infection rate from 30 down to 8 percent, has been remarkable.

The world community must respond. The world community is responding. The United States of America has stepped up to lead the battle. Last year, Congress passed and the President signed a global HIV/AIDS bill which projects out $15 billion over 5 years for the prevention and treatment of HIV/AIDS. At the end of the program's first year, over 200,000 people will be on treatment with 1.1 million people receiving care. In the past few months, the U.S. has released $865 million in HIV/AIDS funding to the 15 nations receiving those emergency funds.

This year, America will provide $2.4 billion to combat that HIV/AIDS virus, as well as tuberculosis and malaria, two other infectious diseases that cause about between 1 and 2 and 3 million deaths in addition, each year, respectively. Ultimately, America's efforts will prevent 7 million new infections. It will provide antiretroviral drugs for 2 million HIV-infected people. It will provide care for 10 million HIV-infected individuals with AIDS and AIDS orphans. This will bring hope to millions of people around the world. It is a lofty goal of a great and compassionate nation.

I have taken the opportunity to mention this today, on Friday, because much of that is from the report of last Tuesday.

Next week there will be some very significant meetings. Over 15,000 scientists and AIDS activists and advocates will gather in Thailand, in Bangkok, for the International AIDS Conference. They will look at prevention efforts. They will look at treatment efforts. They will look at real-life experience. They will look at what works and what does not work, so we can better address this global epidemic.

Americans can be proud of our commitment and compassion. The United States of America is the most generous nation in the world today in fighting HIV/AIDS and providing substantial resources for that prevention, care, and treatment for those infected with the virus.

We will spend about $2.4 billion on global AIDS this year and an estimated $2.8 billion next year. We have already provided over $1.1 billion to the Global Fund to Fight AIDS, Tuberculosis, and Malaria. That is approximately one-third of all the commitments to the fund. Our country, the United States of America, has provided about one-third of all the commitments to the fund and the rest of the world makes up the other two-thirds.

We can't do it alone. It is going to take participation of the recipient countries. They must do their part to promote effective prevention and treatment strategies. It takes demonstrated national leadership such as the leadership of President Museveni in Uganda. Our friends and our allies must continue to provide firm financial and moral support. Nations are contributing. We want to encourage them to contribute more, and that is reflected in the statistics from last week. But demand continues to outstrip or grow faster than supply. Other wealthy nations must increase their contributions. We cannot rely on the Global Fund alone to combat global HIV/AIDS. It takes sustained, focused efforts on the part of individual countries, rich and poor, to lift the shadow of HIV/AIDS. Our Congress, this body, and the President of the United States have shown tremendous leadership in the battle against HIV/AIDS.

It is my hope this week's U.N. report and next week's conference will not just be occasions for more talk but will be catalysts for greater action on the part of the world's leaders. History is going to judge whether the global community stood by and permitted one of the greatest destructions of human life in recorded history or stepped in and performed one of its most heroic rescues. America has chosen the latter. Let us hope the world will, too.

PROGRAM

Mr. FRIST. Mr. President, let me remind my Senators one more time that on Monday, Senators are encouraged to come to the floor to speak on the constitutional amendment on marriage. I will be discussing with the Democratic leader a process for debate and consideration of that joint resolution. Given the amount of debate, I do not foresee a vote on Monday. Thus, as I mentioned a few minutes ago, there will be no rollcall votes during Monday's session.

ADJOURNMENT UNTIL MONDAY, JULY 12, 2004, AT 1 P.M.

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 3:22 p.m., adjourned until Monday, July 12, 2004, at 1 p.m.